
**COLLECTIVE BARGAINING
AGREEMENT**

Between

THE CITY OF SAN ANTONIO

And

**LOCAL 624 INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS**

October 1, 2009 through September 30, 2014

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PURPOSE OF AGREEMENT

It is the intent and purpose of this Agreement, entered into by and between the City of San Antonio, Texas, hereinafter referred to as the "City" or "Employer" and International Association of Fire Fighters Local 624 hereinafter referred to as the "Union" or "Bargaining Agent", to achieve and maintain harmonious relations between the parties, to establish benefits, compensation and other terms and conditions of employment and to provide for the equitable and orderly adjustment of grievances which may arise during the term of this Agreement.

ARTICLE 1.

RECOGNITION

The City recognizes the Union as the exclusive bargaining agent for all permanent paid employees of the City of San Antonio Fire Department, with the sole exception of the Chief of the Department. It is understood that this bargaining unit does not include civilian personnel, including Fire Fighter Trainees enrolled in the initial Fire Academy.

ARTICLE 2.

DEFINITIONS

1. "Employer" means the City of San Antonio.
2. "City" means the City of San Antonio.
3. "Union" means the International Association of Fire Fighters Local 624.
4. "Bargaining Agent" means the International Association of Fire Firefighters Local 624.
5. "Agreement" means the Collective Bargaining Agreement negotiated by and between the Employer and the Union.
6. "Employee" "Fire Fighter" "Bargaining Unit Member" means any full time, permanent, paid employee who has been hired in substantial compliance with Chapter 143 of the Local Government Code.
7. "Civil Service Commission" means the Fire Fighter and Police Officer Civil Service Commission of the City of San Antonio.
8. "Grievance" is defined as a dispute or disagreement involving the interpretation, application or alleged violation of any provisions of this Agreement, and/or of any state or federal statute, rule, or regulation dealing with the employer/employee relationship, except as otherwise provided for herein.

9. "Probationary Period" means the twelve (12) month period immediately following the initial date of employment in the Department (excluding time spent on leave in excess of thirty (30) consecutive days) in accordance with Chapter 143 of the Local Government Code.
10. "Regular Rate of Pay" means an employee's salary plus longevity, incentive, educational, and/or assignment pay.
11. "Chapter 143 of the Local Government Code" means Vernon's Texas Code Annotated, Local Government Code, Title 5, Matters Affecting Public Officers and Employees, Chapter 143, Municipal Civil Service.
12. "Base Pay" means an employee's monthly salary as shown in Article 13, Wages of this Agreement.
13. "Employee's Anniversary Date" shall mean the employee's date of employment (in the Academy) in the Department.
14. "Gender" Reference to the male gender throughout this Agreement shall have equal force and include reference to the female gender.

ARTICLE 3.

MANAGEMENT RIGHTS

Section 1.

The Union recognizes the management of the City of San Antonio and the direction of the Fire Department are vested exclusively in the City, subject to the terms of this Agreement, and nothing in this Agreement is intended to circumscribe or modify the existing rights of the City. These rights include:

- A. Direct the work of its employees to include the scheduling of overtime work.
- B. Hire, promote, demote, transfer, assign, and retain employees in positions within the City, subject to Civil Service regulations and/or terms of this Agreement.
- C. Suspend or discharge employees for just cause, subject to Civil Service regulations and/or the terms of this Agreement.
- D. Maintain the efficiency of governmental operations.
- E. Relieve employees from duties due to lack of work, subject to Civil Service regulations and/or the terms of this Agreement.
- F. Utilize the Fire Department in emergency situations to protect life and property.

G. Use civilians in the Fire Department to perform duties which do not require a sworn certified Fire Fighter. In this regard, the City is authorized to civilianize the following positions or units:

1. Fiscal Management
2. Personnel
3. Clerical
4. Emergency Management
5. Delivery
6. Fire Services/Vehicle Maintenance (with exception of not less than one (1) Fire Captain or higher position)
7. EMS Supply (provided the City hires a civilian that has some medical background and/or holds a paramedic certification)
8. Building Maintenance
9. Information Systems
10. The Union recognizes the City's existing right to transfer personnel who currently are assigned to the Fire Marshall's Office, performing plan checking and review tasks for sprinkler and fire alarms, under the Uniform Building and Fire Codes. Neither the City nor the Union concedes any aspect of its position on civilianization with respect to other tasks or positions as a result of this compromise. This agreement will not be considered a precedent and is not admissible as evidence in any other controversy or proceeding involving civilianization.

Civilians performing duties which do not require a sworn certified Fire Fighter, and civilians performing duties civilianized pursuant to the position/unit list contained herein are not subject to the terms of this Agreement.

H. Determine the methods, processes, means, and personnel by which operations are to be carried out.

THE UNION UNDERSTANDS AND AGREES THAT:

Section 2.

A. Every duty connected with operations enumerated in job descriptions is not always specifically described; nevertheless, it is intended that all such duties relating to the present

mission and concept of the Fire Department, as a public safety organization of the City, shall be performed by the employees.

- B. The City shall have exclusive authority to transfer any City operation now conducted by it to another unit of government, and such transfer shall not require any prior negotiations or the consent of any group, organization, union or labor organization whatsoever. However, the City does agree that prior to any such transfer they will meet and confer with the Union and that the Union may register any objections they have with the City Manager and City Council.
- C. Except as otherwise specifically provided in this Agreement, the City, acting through the City Manager and the Fire Chief, shall retain all rights and authority to which by law it is their responsibility to enforce.

ARTICLE 4.

RULES AND REGULATIONS, SPECIAL DIRECTIVES AND ADMINISTRATIVE ORDERS

Section 1.

The Union recognizes the City's right to establish and enforce reasonable Rules and Regulations, Special Directives and Administrative Orders to conduct the mission of the Fire Department. Likewise, the City recognizes the responsibility of management to a consistent interpretation and application of such Rules and Regulations, Special Directives and Administrative Orders, which governs the conduct of employees on the job. The interpretation and application of Rules and Regulations, Special Directives and Administrative Orders shall be subject to the Grievance and Arbitration procedure.

Section 2.

- A. Should the Fire Chief decide to revise said Rules and Regulations, a joint labor-management committee shall undertake the revision of the Department's Rules and Regulations and recommend the same to the Chief. The Union shall receive the Fire Chief's final proposal of the Rules and Regulations not less than thirty (30) days prior to the Civil Service Commission meeting. If the Chief's final proposed Rules and Regulations differ from the committee's recommendation, the Union shall be entitled to inform the Commission of the differences between the two versions. The Rules and Regulations of the Department will be submitted by the Chief to the Civil Service Commission and, if approved, shall supersede all Department Rules and Regulations.
- B. The City shall be obligated to provide each station and employee with a copy of the Rules and Regulations of the Department approved by the "Civil Service Commission." As Rules and Regulations, Special Directives, Temporary Orders, and/or Administrative Orders are promulgated and/or amended from time to time hereafter, an electronic copy will be provided

to the affected employee and to the Union. When providing a copy to the employee, acknowledgment of receipt shall be the burden of the superior officer.

Section 3.

It is mutually agreed by the parties that the rules and regulations of the Department and/or amendments thereto that are hereinafter approved by the Civil Service Commission shall be made a part hereof and therefore are not subject to Maintenance of Standards as provided for elsewhere herein.

ARTICLE 5.

CITY PROTECTION FOR FIRE FIGHTERS

Section 1.

The City will defend in or out of court any Fire Fighter who incurs a charge or lawsuit as a result of the lawful performance of his duties pursuant to the provisions of City guidelines as adopted and approved under City Ordinance No. 83927, passed and approved April 18, 1996, attached hereto and incorporated herein for all purposes as Attachment I, save and except Section 3 of said Ordinance which is revised to read as follows:

Defense and Settlement

- (a) The City will represent and defend any claim or suit against a Fire Fighter or former Fire Fighter that results from conduct performed in the course and scope of employment for the City occurring prior to termination of the Plan even if the suit is groundless or fraudulent except as follows:
 - 1. The City has neither the duty to defend or indemnify the Fire Fighter if there has been a finding either by the City, through a disciplinary proceeding, internal investigation, or a Court of Law prior to suit being filed that the conduct of the Fire Fighter falls under an Excluded Action.
 - 2. If in the course of defense of the lawsuit, the City identifies a potential conflict between the City and the Fire Fighter because there is a question of whether the conduct of the Fire Fighter falls under an Excluded Action, the City will select and pay for a separate defense of the Fire Fighter with a reservation of rights letter identifying the potential conflict and limits of indemnification.
 - 3. The City's determination shall be final with respect to both representation and indemnification of the Fire Fighter. However, if defense has been denied and the member is successful in his

defense of the claim, the City will reimburse reasonable legal expenses incurred by the member.

- (b) The City will notify the Fire Fighter of any potential for a judgment against the Fire Fighter in excess of the City's indemnification obligations. The Fire Fighter may hire, at the expense of the Fire Fighter, the Fire Fighter's own attorney in addition to the provided counsel to protect against any personal liability above the indemnification limits. The provided counsel will, however, remain lead attorney. Any attorney's fees thus accrued are the responsibility of the Fire Fighter and will not be reimbursed.
- (c) The City may investigate, negotiate, or settle any claim as the City determines necessary or appropriate.
- (d) Said representation and defense of the Fire Fighter, as provided in Sections 1 through 3 above, shall be done in accordance with Ordinance No. 83927, passed and approved April 18, 1996, attached hereto and incorporated herein for all purposes as Attachment I.

Section 2.

The City will seek to recover for damaged or lost property of any employee in any suit or claim that is asserted by the City as to its public property, pursuant to procedure established by the Chief and the City Attorney. The purpose of this section is to enhance and broaden its range of coverage. The ordinance authorizing execution of this contract will amend the existing HAZ-MAT ordinance to authorize such action by the City Attorney.

ARTICLE 6.

UNION ACTIVITY

Section 1. Union Activity on Department Property.

Union members or officers shall not conduct Union business on City time except as specified by this Agreement or as further authorized by the City Manager or the Fire Chief. The Union may hold meetings pertinent to Union business on Fire Department property, provided that permission for such meeting is obtained in advance from the Fire Chief or his designated representative.

Union officers and committee members may conduct Union business on City time at their work location as long as such business does not interfere with their Fire Department duties.

Notwithstanding the provisions hereof, political activity shall not be conducted by the Union or any of its members on City time and/or Fire Department property pursuant to this Section.

The determination by the Fire Chief that Union meetings on Fire Department property or the work of an individual Union member on City time as provided herein shall be binding unless or until it has been determined through the Grievance Procedure found in Article 30, of this Agreement that the Chief has unreasonably exercised his authority granted pursuant to this Article. The Union will be allowed a scheduled four (4) hour orientation class with Fire Cadets within the first two (2) weeks of entering the Fire Academy. The Union shall submit an outline of their presentation to the Chief in advance.

Section 2. Negotiating Committee.

A maximum of three (3) members of the Union Negotiating Committee shall be granted time off with pay (excluding additional pay) for the purpose of attending negotiating meetings between the City and the Union when such meetings occur during the regularly scheduled working time of the employees. Time off shall only be for reasonable transportation time to and from the meeting site, direct route, and the actual time required in the meeting itself. An employee on such administrative leave shall be compensated as though the employee was at work on his regularly-scheduled assignment so that the employee will suffer no reduction in his normal, weekly pay for having participated in negotiations (and/or meetings directly relating thereto and actual travel time--direct route--to and from said meetings) at his regular rate of pay and applicable scheduled FLSA overtime.

Section 3. City Facilities.

Nothing in this Article is intended to prohibit or prevent the Union from utilizing City facilities, available to private organizations on a rental basis, under the same conditions that they are made available to other such private organizations.

Section 4. Union Leave Pool.

A. Effective the first full pay period after October 1 of each year in accordance with Article 17, Section 2, three (3) additional hours vacation leave per filled Fire Fighter position per year will be deducted to establish and maintain a pool of leave hours. This leave will establish a pool of paid time to be granted to individuals selected by the Union to conduct Union business hereinafter referred to as "Union Leave." Leave usage will be governed by the following guidelines:

1. No carry-over of leave pool hours.
2. Limit to the number of persons off at any given time: Fire-3, EMS-2, and one (1) each from Services, Arson, Fire Prevention, Training, and Communications.
3. Limit to the number of persons off per Firefighting company-1.
4. Not more than six (6) persons off at the same time.
5. Leave increment must be equal to or greater than eight (8) hours for Firefighting or EMS divisions and four (4) hours for all forty (40) hour divisions.
6. Where leave increments are above the minimum hours, said increments must be not less than two (2) hours.
7. Request for leave must be made by the Union President or his designee.

8. Request for leave must be directed to the Fire Chief or his designee, via e-mail or fax.
9. Request for leave must be received at the Fire Chief's Office prior to 12:00p.m., (noon), of the shift prior to the shift of leave usage.
10. Request for leave must be in writing, signed by the Union President or his designee, include the names and assignments of employees selected to be on Union Leave and indicate the duration of leave requested for each employee.
11. Employees participating in initial specialized training, (Paramedic or Arson), shall not be authorized to utilize Union Leave while participating in said training.
12. The Fire Chief may deny a request for Union Leave where said request is for an employee assigned to the following positions: Special Projects, Professional Standards, Personnel, Training, Services, Fire Prevention, Arson, Special Teams Coordinator, Safety Officer, and personnel performing special projects receiving higher classification. However, members of the Union Executive Board in any such position shall be subject to Section 4.A.13. of this Article.
13. The Fire Chief may deny a request for Union Leave where approval of said request would be operationally detrimental to the Department. In the event that the Chief denies such a request, the Union may request the reason for the denial. If this occurs the Fire Chief shall explain the reason for said denial in writing.
14. The Fire Chief retains the right to recall employees to duty during an emergency or special event involving an overriding need for protection of the citizens of San Antonio.

B. Nothing in this Article has any effect on rights and prerogatives of the Union, employees, or the Fire Chief with respect to employees attending meetings, conventions, conferences, seminars, or other Union functions on the employee's own time or Union lay-off time.

Section 5. Bulletin Boards.

The City shall allow the Union to use the Fire Department bulletin board at each location. These boards shall be used only for the following notices:

- a. Recreation and Social Affairs.
- b. Union Meetings.
- c. Union Elections.
- d. Reports of Union Committees.
- e. International Association of Fire Fighters and State Association Notices.
- f. Legislative enactments and judicial decisions affecting employees.
- g. Minutes of Union meetings which do not violate the provisions of the following paragraph.
- h. Shall not contain any personal caricatures.

- i. Union endorsements of political candidates shall be in accordance with the provisions of the following paragraph:

Notices of announcements, including reports of Union committees shall not contain anything reflecting upon the City, any of its employees, or any labor organizations among its employees. The notice of Union endorsement of political candidates shall consist of a simple, straight-forward listing of the candidates, without editorializing their merits and void of any remarks about their opponents.

The Union President or his designated representative shall be responsible for the contents of the above notices; any violation of the provisions of this Article shall entitle the City to revoke this concession and such revocation is subject to the grievance procedure.

Section 6. Radio, MDT, and Electronic Mail Announcements.

The Union will be allowed use of these medias for the purposes of pertinent information, i.e., Union Meetings, Special Announcement, etc. All announcements shall first be approved by the Chief or his designee, which approval shall not be unreasonably withheld if the announcement complies with the provisions of Section 5 above.

Section 7.

The City agrees to provide the Union President with the written copy of announcements intended for dissemination generally to Department employees. Copies of such announcements shall be placed in a mail slot to be maintained for the Union President at the Department's Administrative Offices.

ARTICLE 7.

PAYROLL DEDUCTIONS

Section 1. Union Dues.

The City agrees that on each pay day it shall deduct Union dues from each member of the Union in the amount certified to be current by the Financial Secretary of the Union and the Director of Finance. Dues shall be set in accordance with the Constitution and By-laws of the Union and shall be authorized by each member pursuant to state law. The President and Financial Secretary shall notify the Director of Finance in writing of any certified dues increase election. Within thirty (30) days following notification of approval, the City shall change dues deductions to the notified amount.

Section 2. Special Assessments.

With the sole exception of the Union's death benefit, the City shall deduct special assessments which are duly authorized pursuant to the Constitution and By-laws of the Union and are voluntary and individually authorized by the member. A single authorization shall be utilized for all deductions of the death benefit.

Section 3. Indemnification.

The City will be obligated to remit to the Union only those sums deducted as dues and assessments pursuant to this Section. The Union agrees to promptly refund to the City any amount paid to it in error upon presentation of satisfactory proof by the City. The Union agrees to indemnify and hold the City harmless from any cause of action instituted by any individual as a result of the City's deduction of dues and special assessments.

Section 4. Application.

This Article shall apply only to payroll deductions authorized for the payment of dues and fees to Local Union No. 624, to the exclusion of any other organization or of deductions for any other purpose provided, however, that no present deduction will be changed or affected.

Section 5. Administrative Fees.

The City shall have the right to charge an administrative fee to recover the cost associated with the administration of any new special assessment(s) or deduction(s) implemented after the effective date of this Agreement requested by the Union. This shall not apply to existing Union dues and PAC contributions. It is also understood and agreed that an increase or decrease in Union dues and/or PAC contributions are not a change under this paragraph. The Director of Finance shall have the right to develop such fee and amend it annually based on any change in the cost of administration. The City shall notify the Union of any change in the administrative charge at least thirty (30) calendar days prior to the implementation of the change. Such administrative charge shall be withheld from the amount collected and remitted to the Union. The fee shall include the actual cost to set up each deduction plus fifteen (15%) percent, not to exceed three hundred dollars (\$300.00).

ARTICLE 8.

SPECIAL ASSIGNMENT OF UNION PRESIDENT

The City agrees that the President of the Union will be placed on special assignment during the term of his presidency. The special assignment will give the Union President the latitude to deal with the duties of his presidency while retaining the privileges of his employment, while the Fire Chief retains the right to recall him to duty during an emergency or special event involving an overriding need for the protection of the citizens of San Antonio.

The Fire Chief reserves his existing authority to revoke special assignment for the Union President during emergencies or when the welfare of the citizens of San Antonio is placed in jeopardy. The Union President, as part of his Union duties, reserves the right, as in the past, to mitigate grievances at all informal and formal levels in order to reduce the number of complaints and, in all cases, reserves the right to speak, visit with the men and women who are members of the Union, as well as to tour existing fire facilities and to review existing equipment toward the goal of improving the quality of worklife for the Fire Fighters of the City of San Antonio whom he represents. In addition, he will participate as the duly-elected representative of men and

women of the Union in any discussion that may affect the quality of worklife, health, and well-being of any Union member.

It is understood that the President of the Union shall suffer no loss of longevity, seniority, pension, days off, or any other benefits as a result of and during the term of such special assignment. Provided, however, the President shall be entitled to educational and/or certification pay, if applicable, but shall not be entitled to premium assignment or incentive pay (i.e., overtime) unless directed by the Chief to perform Fire Fighter duties that call for payment of said premium pay. When the term of the President expires, the President shall be eligible to return to his previously-assigned shift and duty assignment, provided any certificate that is required has been maintained.

ARTICLE 9.

MAINTENANCE OF STANDARDS

All standards, privileges and working conditions enjoyed by the City of San Antonio Fire Fighters at the effective date of this Agreement, which are not included in this Agreement, shall remain unchanged for the duration of this Agreement.

ARTICLE 10.

NO STRIKES, NO LOCKOUTS

The Union shall not cause, counsel, or permit its members to strike, slow down, disrupt, impede or otherwise impair the normal functions of the Department, nor to refuse to cross any picket line by whomever established, where such refusal would interfere with or impede the performance of the employee's duties as an employee of the City. The City shall not lock out any employee.

ARTICLE 11.

NON-DISCRIMINATION

Section 1.

Both the City and the Union agree that neither shall willfully discriminate against any employee, member, or prospective member, because of race, color, religion, national origin, sex, age, or disability if otherwise qualified to fulfill the duties of the position.

Section 2.

Alleged violations of Section 1, as well as claims of discrimination made under Federal and/or State law, shall not be subject to the grievance/arbitration procedures of this Agreement.

ARTICLE 12.

LABOR MANAGEMENT RELATIONS

Section 1.

The Chief of the Department and the President of the Union shall meet monthly (if requested by either) for the purpose of conferring over issues relating to labor relations, health and safety, and other such matters. Neither shall be required to meet unless a minimum of seven (7) calendar days advance notification be made, in writing, stating the purpose of the meeting and the topics to be discussed.

Section 2.

In the interest of Labor/Management relations, the Chief of the Department and the President of the Union shall convene a Labor/Management Committee Meeting and/or a Correlating Committee meeting at either party's request. The Fire Chief shall grant administrative leave for up to three (3) committee members. The Union President shall designate personnel for administrative leave that will not create higher classification pay. This shall apply to no more than one (1) meeting per month. Nothing herein shall preclude the Fire Chief and Union President from having additional labor/management meetings. However, these additional meetings shall not be applicable to the administrative leave allowed herein. At no time shall more than one (1) committee member be qualified for this administrative leave from each of the following Divisions/Sections: Fire Suppression, EMS, Communications, Fire Prevention, Training, Services and Arson. Employees that are on duty and requested by the President to attend such meetings shall be allowed to continue to utilize Union lay-off time. Committee members who are not on duty shall attend on their own time.

Section 3.

The parties hereto shall be authorized to jointly appoint other necessary committees with specific goals and objectives of mutual benefit and concern, including, but not limited to, a vehicle accident committee, occupational safety and health committee, and such other committees as the parties shall choose to establish.

Section 4.

Any committees designated shall meet at times and places authorized by the Chief so as to cause the least possible interference with existing duties. Every reasonable effort will be made to schedule meetings at times agreeable to all members of the Committee. The work of said committees shall be conducted on City time without loss of pay by committee members; except that meetings which are scheduled at times when Union members who work shifts are not on duty, such employees shall attend on their own time.

Section 5.

In addition to the establishment of committees, the Chief and the President shall be at liberty to discuss pending grievances and/or issues of mutual interest and/or concern, even where the same involves an individual claim or claims of one or more employees of the Department.

Section 6.

This Article shall not impair the Chief's rights under Article 3. Management Rights.

ARTICLE 13.

WAGES

Section 1. Wages.

The parties have agreed to the following pay increases during the term of this agreement. These increases are reflected in the wage charts below.

October 1, 2009: 0%
October 1, 2010: 2%
October 1, 2011: 2.2%
October 1, 2012: 3.4%
October 1, 2013: 3.4%

Section 2. Monthly Base Salaries.

Fire Fighter Rank Step Schedule.

- Step A - Fire Fighters, from Probation through eighteen (18) months after date of employment.
- Step B - Fire Fighters, from the 19th month after date of employment through completion of 60th month after date of employment.
- Step C - Fire Fighters, from the 61st month after date of employment until eligible for Fire Fighter Step D.
- Step D - Fire Fighters with at least ten (10) years seniority in rank and an Associate's Degree or higher or Fire Fighters with fifteen (15) years seniority in rank shall be eligible for Fire Fighter Step D.
- Step E - Fire Fighters with at least fifteen (15) years seniority in rank and an Associate's Degree or higher or Fire Fighters with twenty (20) years seniority in rank shall be eligible for Fire Fighter Step E.

	Step A	Step B	Step C	Step D	Step E
Effective 10/01/09	\$3,900	\$4,329	\$4,412	\$4,500	\$4,590
Effective 10/01/10	\$3,978	\$4,416	\$4,500	\$4,590	\$4,682

Effective 10/01/11	\$4,066	\$4,513	\$4,599	\$4,691	\$4,785
Effective 10/01/12	\$4,204	\$4,666	\$4,756	\$4,850	\$4,948
Effective 10/01/13	\$4,347	\$4,825	\$4,917	\$5,015	\$5,116

Fire Engineer Rank Step Schedule

- Step A - Fire Engineers with less than five (5) years seniority in rank.
Step B - Fire Engineers with five (5) or more years of seniority in rank.
Step C - Fire Engineers with at least five (5) years seniority in rank and an Associates Degree or higher or Fire Engineers with ten (10) years seniority in rank shall be eligible for the Fire Engineer Step C.
Step D - Fire Engineers with at least ten (10) years seniority in rank and an Associates Degree or higher or Fire Engineers with fifteen (15) years seniority in rank shall be eligible for the Fire Engineer Step D.

	Step A	Step B	Step C	Step D
Effective 10/01/09	\$4,746	\$4,836	\$4,933	\$5,032
Effective 10/01/10	\$4,841	\$4,933	\$5,032	\$5,133
Effective 10/01/11	\$4,948	\$5,042	\$5,143	\$5,246
Effective 10/01/12	\$5,116	\$5,213	\$5,318	\$5,424
Effective 10/01/13	\$5,290	\$5,390	\$5,499	\$5,608

Lieutenant Rank Step Schedule

- Step A - All Lieutenants not eligible for Lieutenant Step B.
Step B - Lieutenants with at least five (5) years seniority in rank and an Associate's Degree or higher or Lieutenants with ten (10) years seniority in rank shall be eligible for Lieutenant Step B.

	Step A	Step B
Effective 10/01/09	\$5,425	\$5,534
Effective 10/01/10	\$5,534	\$5,645
Effective 10/01/11	\$5,656	\$5,769
Effective 10/01/12	\$5,848	\$5,965
Effective 10/01/13	\$6,047	\$6,168

Captain Rank Step Schedule

- Step A - All Captains not eligible for Captain Step B.
Step B - Captains with at least five (5) years seniority in rank and an Associate's Degree or higher or Captains with ten (10) years seniority in rank shall be eligible for Captain Step B.

	Step A	Step B
Effective 10/01/09	\$6,201	\$6,325
Effective 10/01/10	\$6,325	\$6,452
Effective 10/01/11	\$6,464	\$6,594
Effective 10/01/12	\$6,684	\$6,818
Effective 10/01/13	\$6,911	\$7,050

District Chief Rank Step Schedule

Step A - All District Chiefs not eligible for District Chief Step B.

Step B - District Chiefs with at least five (5) years seniority in rank and a Bachelors Degree or higher or District Chiefs with ten (10) years seniority in rank shall be eligible for District Chief Step B.

	Step A	Step B
Effective 10/01/09	\$7,098	\$7,240
Effective 10/01/10	\$7,240	\$7,385
Effective 10/01/11	\$7,399	\$7,547
Effective 10/01/12	\$7,651	\$7,804
Effective 10/01/13	\$7,911	\$8,069

Section 3. Longevity.

In addition to wages as set forth in the pay schedule above, each Fire Fighter's base pay shall be increased by three percent (3%) for each five (5) years of his longevity, to a maximum of thirty (30) years, i.e., a thirty (30) year veteran would receive an additional payment not to exceed eighteen percent (18%). On each Fire Fighter's anniversary date, which is not a multiple of five (5), he shall receive an eight dollar (\$8.00) increase in his longevity pay per month, and the eight dollar (\$8.00) interim monthly adjustments will not increase any fifth year levels. The eight dollar (\$8.00) payment as noted herein shall be in lieu of the four dollar (\$4.00) per month per year of service payment called for in Chapter 141.032 Local Government Code and is specifically intended to supersede said section.

ARTICLE 14.

OVERTIME

Section 1.

All employees shall be paid at the rate of time and one half (1-1/2) that of their regular rate of pay for all hours worked over their regular scheduled working hours.

Section 2.

All employees who are called back to work when they are off duty shall be paid a minimum of two (2) hours at time and one-half (1-1/2) and shall be paid at the rate of time and one-half (1-1/2) for all hours worked over two (2) hours.

Section 3.

All Fire Suppression employees who are assigned a fifty-six (56) hour work week schedule shall receive time and one-half (1-1/2) their regular rate of pay for all hours worked in excess of one hundred fifty nine (159) hours per twenty-one (21) day work cycle. Accordingly, for each additional hour, or portion thereof, actually worked by said employee in excess of one hundred fifty nine (159) hours during the twenty-one (21) day cycle, that employee shall receive overtime pay based on the following: 1.5 times the number of hours actually worked in excess of 159 hours times the quotient of 159, divided into the employee's three week gross regular salary. Under a twenty-one (21) day cycle, each employee shall lose no more than twenty-seven (27) hours of overtime pay per year as a result of scheduled vacation leave being counted as productive time for F.L.S.A. purposes. For the purpose of computing eligibility for F.L.S.A. overtime and application of the twenty-seven (27) hour limit in this paragraph, all other types of leave will take priority over vacation leave in application of this provision (i.e. when vacation and any other form of leave is used in the same 21 day cycle, the loss of F.L.S.A. overtime shall not apply to the twenty-seven (27) hour maximum. It is intended that a Fire Fighter will lose only one cycle of F.L.S.A. overtime per scheduled vacation, even if a vacation period splits two cycles. F.L.S.A. overtime will be charged against the first three (3) vacation periods taken in that calendar year. Employees shall, however, be allowed to exempt use of one shift of sick leave and/or military leave each calendar year from the provisions of this paragraph.

Section 4.

When two (2) or more types of overtime or premium compensation are applicable to the same hours of work, only the higher rate(s) of compensation shall be paid. In no event shall overtime or premium compensation be pyramided.

ARTICLE 15.

HOURS

Section 1. General.

The following shall be the regular established work schedule for the employees covered by this Agreement and shall remain in effect, except that the Chief may make no more than one change per section per contract, and then only after sixty (60) days notification in writing to the Union unless exemption to notification is provided herein. Any additional changes must be made by mutual consent between the City and the Union. During a sixty (60) day notification period, the Union shall be given the opportunity to meet and confer with the Chief and register any objection it may have to the change of hours.

Section 2. Emergency Medical Technicians (Regular) and Communications.

Emergency Medical Technicians and Emergency Medical Service Communications Division personnel shall work the following regular hours.

- A. An average forty two (42) hour work week.
- B. The work period is four (4) consecutive weeks or twenty-eight (28) days beginning at 7:00 a.m. Sunday and ending twenty-eight (28) days later. The work shift shall begin at 7:00 a.m. and end at 7:00 a.m. the following day, consisting of twenty-four (24) consecutive hours.

42 Hour Work Week - Schedule for One Employee

S	M	T	W	TH	F	S
17	7	OFF	OFF	17	7	OFF
OFF	17	7	OFF	OFF	17	7
OFF	OFF	17	7	OFF	OFF	17
7	OFF	OFF	17	7	OFF	OFF

One (1) work shift shall equal two (2) twelve (12) hour working days for administrative purposes (sick leave, annual leave, disciplinary action, military leave, etc.)

Personnel may not work more than twenty-four (24) continuous hours, except if personnel are on a response at shift change. Personnel must have twenty-four (24) hours off prior to working. This applies to overtime and trading time.

Vacation scheduling must be equalized throughout the year.

- C. The Chief shall have the right to schedule a separate group of employees on a power shift schedule provided that the schedule does not exceed an average forty two (42) hour work week. No individual power shift work shift shall exceed twelve (12) hours. No more than four (4) power shift work shifts will be scheduled in any seven (7) calendar day week period. The Chief's right to implement such a shift shall be limited to or by the following conditions:
 - 1. The Fire Chief and the Union shall negotiate on the specific shift schedule to be implemented and the impact of such a schedule. In the event the Fire Chief and the Union do not reach a full agreement on the schedule, the unresolved issues shall be submitted to a binding arbitration procedure as provided in the statutory provision of Sections 174.154, 174.155, and 174.157 through 174.164 (Texas Local Government Code) as such sections exist at the date of this contract. No other provisions in said Chapter shall be applicable to the partial re-opener provided for in this Article;
 - 2. Additional EMS units must be placed into service by the City beyond twenty three (23) units prior to establishing a permanent power shift schedule pursuant to this section; and

3. All slots must represent new positions, and shall be filled from volunteers, or from promotions.

Each paramedic actually working a power shift schedule pursuant to this section and on a straight time basis for one-half (1/2) or more of any calendar month shall be entitled to shift differential pay in the amount of three hundred and fifty dollars (\$350) for the full month. No partial payment shall be made for working less than one-half (1/2) of the calendar month. Time taken by an employee on Sick Leave or LOD Leave while assigned to a power shift work schedule shall not be counted as time working for the purpose of eligibility to receive shift differential pay.

Nothing in this section shall preclude the Fire Chief from establishing or continuing any power shift or peak period staffing schedule on an overtime basis.

Section 3. Specified Employees in the Fire Department Repair Shops.

For employees assigned to the Fire Department Repair Shops, the work day shall begin at 7:45 a.m. and end at 4:30 p.m. each work day, Monday through Friday, with forty five (45) minutes for lunch, and two (2) fifteen (15) minute breaks, one (1) in the morning and one (1) in the afternoon.

Section 4. Fire Fighting.

Employees assigned to the Fire Fighting Division or Aviation Division, shall work the following regular hours:

An average fifty-six (56) hour work week. The work period is three (3) consecutive weeks or twenty-one (21) days beginning at 9:00 a.m. Sunday and ending twenty one (21) days later. The work shift shall begin at 9:00 a.m. and end at 9:00 a.m. the following day, consisting of twenty four (24) consecutive hours. One (1) work shift shall equal two (2) working days.

56 Hour Work Week - Schedule for One Employee

S	M	T	W	TH	F	S
15	9	OFF	15	9	OFF	15
9	OFF	15	9	OFF	15	9
OFF	15	9	OFF	15	9	OFF

Section 5. Arson Employees.

Employees assigned to the Arson Division shall work the following regular hours, with the exception of the Captain assigned to Arson who shall work a forty (40) hour, five (5) day work week:

- A. A forty (40)-hour, ten (10)-hour-per-day, four (4) day work week;

- B. Employees assigned or detailed to specialized training, i.e., HazMat, National Fire Academy, E.M.T., etc., shall not lose any of their standard rate of pay, i.e., F.L.S.A. overtime, as per their regular assignment. Total hours worked may not exceed current F.L.S.A. cycle average and such employee's schedule will be adjusted to compensate for reasonable travel (most direct route and most expedient mode) and class time required while on specialized training.
- C. Employees assigned or detailed to Paramedic Training are considered part of the E.M.S. Division and are covered by F.L.S.A. guidelines relative to a forty (40) hour work week.

Section 7. Airport Coordinator, and Other Uniformed Employees.

- A. Airport Coordinator and all other uniformed employees not specifically mentioned before shall work the following hours: A forty (40) hour work week, Monday through Friday, beginning at 7:45 a.m. and ending at 4:30 p.m. each day, with forty-five (45) minutes for lunch and two (2) fifteen (15) minute breaks, one (1) in the morning and one (1) in the afternoon.
- B. With regards to any of the employee groups mentioned in A. above, the Fire Chief may, at his discretion, authorize a four (4) day work week. In such an event, said employees shall be scheduled to work a forty (40) hour, ten (10) hours per day, four (4) day work week from 7:00 a.m. to 5:00 p.m., which four (4)-day period shall be scheduled between Monday and Friday.

Section 8. Fire Prevention.

- A. The Fire Marshall and Division Chiefs shall have the option to work a forty (40) hour work week, Monday through Friday, beginning at 7:45 a.m. and ending at 4:30 p.m. each day, with forty-five (45) minutes for lunch and two (2) fifteen (15) minute breaks, one (1) in the morning and one (1) in the afternoon or a forty (40) hour, ten (10) hour per day, four (4) day work week beginning at 7:00 a.m. and ending at 5:00 p.m. Monday through Friday.
- B. The Fire Chief shall implement a four (4) day work week in Fire Prevention for operational employees (Inspectors and Community Safety & Education assigned personnel) pursuant to subsection C below.
- C. In such event, said employees referenced in subsection B, Operation Employees (Inspections and Community Safety & Education assigned personnel), shall be scheduled to work a forty (40) hour, ten (10) hours per day, four (4) day work week, beginning at 7:00 a.m. and ending at 5:00 p.m., which four (4) day period shall be scheduled between Monday and Friday. Employees under such schedule shall be entitled to a thirty (30) minute lunch break under the same provision in Section 5(D).

Section 9. Transfer from One Shift Schedule to Another.

An employee who is transferred and, as a result, changes from one shift assignment to another (e.g., twenty-four (24) hour shift to eight (8) hour shift) shall have a minimum of eighteen (18)

hours off from the time he completes his last shift on his original schedule until the time he must report for duty on the new schedule to which he is assigned. No overtime shall accrue to any individual transferred in conformance with this section.

Section 10.

The provisions of this Article can be changed by mutual agreement between the City and the Union.

ARTICLE 16.

WORKING OUT OF CLASSIFICATION

- A. An employee who works in a higher classification shall be paid at the higher classification rate of pay for actual time worked in that classification.
- B. The assigned Fire Engineer who works as a District Chief Aide shall be paid at the higher classification rate of pay for actual time worked only in the absence of a District Chief.

It is intended that higher classification pay be given to the Fire Engineer that is assigned as a District Chief's Aide only when the District Chief is off on some type of leave (i.e., vacation, sick leave, administrative leave, etc.) or upgraded to Assistant Chief and a Captain is receiving higher classification pay for performing the duties of the District Chief. The contractual wording, "...in the absence of the District Chief..." does not include time where the District Chief is not in physical proximity of the Aide but is otherwise on-duty and not being replaced by a Captain.

ARTICLE 17.

VACATIONS

Section 1. Vacation Accrual.

Non-Forty Hour Employees: The following is a vacation accrual schedule which shall be implemented for non-forty hour employees covered by this Agreement: Employees will accrue vacation days according to the following schedule, minus any vacation days previously borrowed.

Beginning of Probation through 10 years of completed Service – 15.25 days.

Beginning 11th year through 15th year of completed Service – 20.25 days.

Beginning 16th year of Service – 25.25 days.

In the future should the number of vacation days provided to San Antonio Police Officers increase, the amount of vacation days will increase to match police department schedules for department seniority, taking into account Association Business Leave hours on both sides.

- B. Forty Hour Employees:** The following is a vacation accrual schedule which shall be implemented for forty (40) hour employees covered by this Agreement: Employees will accrue vacation days according to the following schedule, minus any vacation days previously borrowed.

Beginning of Probation through 10 years of completed Service – 15.25 days.

Beginning 11th year through 15th year of completed Service – 20.25 days.

Beginning 16th year of Service – 25.25 days.

In the future should the number of vacation days provided to San Antonio Police Officers increase, the amount of vacation days for Fire Fighters will increase to match police department schedules for department seniority, taking into account Association Business Leave hours on both sides.

Section 2. Additional Vacation Hours.

In addition to the vacation accrual amounts outlined in Section 1 of this Article, beginning the first full pay period after October 1, of each year, each employee shall receive an additional 3 hours of vacation each fiscal year. This Section provides hours for Article 6, Section 4 Union Leave.

Section 3. Floating Vacation Shifts (FVS).

- A. Except as provided in Section 3, Perfect Attendance Leave, an employee may request from his accrued vacation leave, up to four (4) shifts. This leave is to be taken from his scheduled vacation.
- B. An employee must apply in writing no less than prior to the beginning of the shift (or the workday, for forty (40) hour employees) prior to the shift being taken. Selection will be made on a first-come, first-served basis, by log date and time entry at a location to be designated by the Division Head.
- C. There will be a maximum of the four (4) employees allowed off on FVS per shift (two (2) in Fire Suppression and two (2) in EMS, and one (1) additional FVS per year per paramedic), with the exception of holidays or the day before or after a holiday. If a person requests a floating vacation shift and is denied and the employee calls in sick for that shift, he must provide a physician's certificate signed by a physician upon his return to duty.

Section 4. Perfect Attendance Leave (PAL).

- A. Any employee who achieves perfect attendance over a six (6) month period shall be entitled to utilize two (2) additional shifts of accrued vacation leave outside of scheduled vacation periods plus may convert one (1) shift of sick leave for use as a floating vacation shift in accordance with the provisions of this section, hereinafter to be called "perfect attendance

leave". Employees who have completed their 25th year of service shall be entitled to convert an additional one shift of sick leave, for a total of two (2) per sixth month time frame, for use as a floating vacation shift in accordance with the provisions of this section, hereinafter to be called "Perfect Attendance Leave." Perfect Attendance Leave shall be used during the subsequent six (6) months.

- B. The Chief shall provide a minimum of three (3) slots in Fire Suppression, two (2) slots in EMS, and one (1) slot in each other division which shall be available solely for perfect attendance leave.
- C. An employee must apply, in the manner provided per Department policy, no less than prior to the beginning of the shift (or the workday, for forty (40) hour employees) prior to the shift being taken. Selection will be made on a first-come, first served basis, by log date and time entry at a location to be designated by the Division Head.
- D. "Perfect attendance" shall mean that the employee has not utilized any of the following types of leave:
 - 1. sick leave,
 - 2. emergency leave (provided that use of bereavement leave, although taken on an emergency leave basis, shall not be a disqualification under this section),
 - 3. line of duty leave (provided that use of LOD leave for a portion of a shift, as to those employees that return to work on of the following shift, shall not be a disqualification under this section),
 - 4. leave without pay, and
 - 5. suspensions.
- E. For purposes of this section, six (6) months shall be defined as consecutive calendar months, beginning the first shift hour in October, and the first shift hour in April.
- F. There shall be no restricted days at the beginning of October or April that are off limits for PAL conversion. Current eligibility time frames coinciding with the first half and second half of the fiscal year remain in place. A Fire Fighter that meets eligibility requirements prior to the current 15-day request cutoff may apply for a PAL conversion on these currently restricted dates. If said Fire Fighter becomes ineligible within fifteen (15) calendar days of the scheduled PAL shift, his PAL conversion shall be cancelled and he shall be required to make other arrangements to cover that shift.

Section 5. Bonus Days Leave.

- A. Each employee shall be entitled to two (2) additional leave days for each six (6) months of "perfect attendance."
- B. Employees not working for one of the following reasons are not eligible to receive the two (2) days perfect attendance bonus:

1. sick leave,
 2. LOD (provided that the use of LOD leave for a portion of a shift, as to those employees that return to work in the following shift, shall not be a disqualification under this section),
 3. emergency leave,
 4. leave without pay, and
 5. suspensions.
- C. The types of leave that will not adversely affect the employee's entitlement to the perfect attendance bonus are:
1. LOD (provided that the use of LOD leave for a portion of a shift, as to those employees that return to work on the following shift),
 2. properly scheduled and authorized vacation days,
 3. holidays,
 4. compensatory time,
 5. bereavement leave,
 6. administrative leave,
 7. time restored by the commissioner or an arbitrator (hearing examiner); and
 8. military leave.
- D. For purposes of this Section, effective October 1, 2011, six (6) months shall be defined as consecutive calendar months, beginning October 1st and April 1st.
- E. Bonus day leave shall be taken at the employee's choice of either pay or FVS. If the employee elects to receive pay in lieu of time, the City shall pay the employee his amount at the same time each year as the City pays other City employees their sick leave buy back, but no later than Christmas Eve day. If the employee elects to receive pay in lieu of time, the City shall pay the employee his earned Bonus day leave at the employee's regular rate of pay. This amount shall be paid at the same time each year as the City pays other City employees their sick leave buy back, but no later than Christmas Eve day. If the employee elects to use Bonus Leave as time off, the employee must schedule the time off in accordance with Department policy.
- F. The end of the fiscal year (September 30th) will be the cut-off for reporting bonus leave eligibility. If the employee has not chosen to take bonus days earned in a fiscal year as time off by October 15th of the next fiscal year, the employee will be paid for earned bonus leave. All bonus days earned in a fiscal year that have not already been taken as time off will be paid as outlined in Section 5 E. of this Article unless the employee elects to take the bonus days as time off in the following fiscal year.

Section 6. Short Notice Vacation Leave.

Effective January 1, 2012, an employee will be eligible to use up to two (2) shifts of Short Notice Vacation Leave (SNVL) per calendar year. This leave shall be taken from the employee's remaining scheduled vacation.

The Firefighting and EMS Divisions shall offer SNVL shifts to employees, the availability and number of which shall be based upon staffing levels and at the discretion of the Shift Commanders. Divisions shall notify employees of the number of SNVL opportunities available no later than the start of the shift on which the opportunity exists.

Section 7.

This Article is intended to supersede the Terms of any statutory provisions including Section 142.0013(c) of the Texas Local Government Code, pursuant to Section 174.006 of the Texas Local Government Code. The parties further agree that this provision was mutually intended by the parties in the prior agreement to override inconsistent provisions under state law. The Association agrees to deny any grievance filed by a class or individual against the City asserting that the City owes the Fire Fighter or class additional vacation days under the prior or current agreement as not stating a valid contract claim. The Association additionally agrees that the City has a complete defense to any lawsuits for past claims or claims during the contract term, and agrees to provide non-economic support to the City in its defense of any such claims because said claims are barred under the terms of the agreements and other legal defenses.

ARTICLE 18.

HOLIDAYS

Section 1.

All employees covered by this Agreement shall be granted thirteen (13) legal holidays. All holidays shall be accrued and taken in accordance with Departmental policy. In the future should the number of holidays provided to San Antonio Police Officers increase, the amount of holidays for Fire Fighters will increase to match Police Department schedules.

Section 2.

All employees who work on a shift during a Premium Holiday listed below shall be paid an additional one-half (1/2) time that of his/her regular rate of pay for the actual hours worked during the Premium Holiday. Actual hours paid for both shifts working a Premium Holiday will not exceed twenty four (24) hours. Holiday pay shall not apply to those employees who are working an overtime opportunity.

Premium Holidays shall commence at 12:01 a.m. and end twenty four (24) hours later at 12:00 a.m. and shall include the following eight (8) holidays:

New Year's Day
Easter Sunday
Independence Day
Veteran's Day
Thanksgiving Day
Christmas Eve

Christmas Day
New Year's Eve

Section 3.

This Article is intended to supersede the Terms of any statutory provisions including Section 142.0013(c) of the Texas Local Government Code, pursuant to Section 174.006 of the Texas Local Government Code. The parties further agree that this provision was mutually intended by the parties in the prior agreement to override inconsistent provisions under state law. The Association agrees to deny any grievance filed by a class or individual against the City asserting that the City owes the Fire Fighter or class additional holidays under the prior or current agreement as not stating a valid contract claim. The Association additionally agrees that the City has a complete defense to any lawsuits for past claims or claims during the contract term, and agrees to provide non-economic support to the City in its defense of any such claims because said claims are barred under the terms of the agreements and other legal defenses.

ARTICLE 19.

BEREAVEMENT LEAVE

Section 1.

In the event of death in the immediate family of an employee who is otherwise assigned to duty, the employee shall be granted time off with pay as follows:

- A. Employees working Fire Suppression, Communications and EMS employees working forty-two (42) hour work week shall be granted two (2) shifts off following the death. Unless exclusive permission is received from the Fire Chief, the working days as outlined by this Section shall be taken within fourteen (14) calendar days from the date of the death of the family member. Such permission shall not be unreasonably withheld.
- B. Other employees shall be granted four (4) working days off following the death. Unless exclusive permission is received from the Fire Chief, the working days as outlined by this Section shall be taken within fourteen (14) calendar days from the date of the death of the family member. Such permission shall not be unreasonably withheld.
- C. In conformity with the current practice, employees who experience a family emergency shall be placed on FMLA upon compliance with the statutory requirements, until such time the employee indicates that the family member dies. At such time the employee is placed on bereavement leave.

The immediate family shall be defined as the employee's mother, father, legal spouse, child, brother, sister, half-siblings, grandmother, grandfather, mother-in-law, and father-in-law, spouse's grandparents, grandchildren, step-parent, step-children or other members of the immediate household.

Section 2.

Employees in the Firefighting Division may use one (1) shift of Bereavement Leave without loss of F.L.S.A. overtime. However, employees who use their second bereavement leave shift shall lose F.L.S.A. overtime for both bereavement leave shifts. In the event a Fire Fighter uses bereavement leave on more than three (3) occasions in any one year, F.L.S.A. overtime shall be lost for such leave and each occasion thereafter.

Section 3.

In the event an employee is on military leave during the occurrence of a death in the immediate family and, as a result, is required by the military to make up the time taken off from military leave, he shall be entitled to bereavement leave as provided in this Article.

Section 4.

The Chief shall have discretion in cases that are found to be fraudulent requests or use of bereavement leave to deny any employee such bereavement leave provided, however, that such denial shall be subject to the grievance and arbitration procedures of this Agreement.

ARTICLE 20.

UNIFORM ITEMS AND PERSONAL PROTECTIVE EQUIPMENT

Section 1. Uniforms.

A. Uniform Commissary

1. At the time of the signing of this Agreement, the parties acknowledge that the City has provided the employees an initial issue of uniforms, as such term is defined by the Commissary System Contract. The City agrees to make available uniforms to employees, on an as-needed replacement basis, in accordance with the generally prevailing operational policies and practices in effect at the time of the signing of this Agreement, except as specifically modified herein; and with the full understanding that the City would not be obligated for anything beyond such generally prevailing operational policies and practices in effect at the time of the signing of this Agreement, except as specifically modified herein; and with the full understanding that the City would not be obligated for anything beyond such generally prevailing operational policies and practices in effect at the time of the signing of this Agreement, except as specifically modified herein; and with the full understanding that the City would not be obligated for anything beyond such generally prevailing operational policies and practices in effect at the time of the signing of this Agreement unless expressly set forth in this Article.

B. Acquisition of Uniform Items

1. Beginning with the execution of this agreement and throughout its term, it is the City's responsibility to make uniform items available at the commissary location from 7:45 a.m. to 4:30 p.m., Monday through Friday, except City Holidays.
2. It is the employee's responsibility to acquire the necessary uniform items from the commissary or otherwise and present themselves properly attired for work under Department policies. The City shall have no duty to pick up or deliver uniform items to employees.

C. Uniform Credit System

1. The City shall establish a uniform credit system under a revised commissary contract whereby each employee shall have a five hundred dollars (\$500.00) credit assigned to that employee to allow the employee to acquire and maintain his/her uniform items, not classified as PPE. Each employee shall be assigned a five hundred dollar (\$500.00) credit each fiscal year thereafter. "Fiscal year" shall hereinafter refer to the period from October 1st through September 30th.
2. Existing minimum specifications for uniform items available to employees under the Commissary System in effect on September 30, 2002 shall remain available for purchase by the employee throughout the life of this Agreement.
3. Uniform items not required by Department policy at the time of the signing of this Agreement, shall not be mandated unless by mutual agreement or legislative change.
4. Employees shall only use the designated credit to acquire and maintain uniform items used in the performance of their duties. All uniform items purchased by the employee using said credit must meet the requirements set forth in the Department's uniform policies.
5. In the event an employee's designated credit is exhausted during the fiscal year and said employee needs or is required to purchase a uniform item(s), the employee shall be responsible for acquiring the uniform item(s) at their own expense.
6. Any unused credit shall not be carried forward to the following fiscal year.

D. Additional Clothing Allowance

Effective October 1, 2012, each employee shall receive an additional clothing allowance of three hundred and sixty (\$360.00) per fiscal year. Effective October 1, 2013, each employee's clothing allowance shall increase to seven hundred and twenty (\$720.00) per fiscal year. Such amounts shall be paid during the month of October in the off cycle by separate check or direct deposit as the City shall determine.

E. Clothing Allowances Applicable to Probationary Fire Fighters

Upon completion of the Training Academy, Probationary Fire Fighters shall receive their full uniform credit as defined in this Article.

F. Cleaning of Uniform Items

The employee shall continue to be responsible for routine cleaning of uniforms items in accordance with generally applicable policies and operational practices in effect at the time of the signing of this Agreement; and with the full understanding that the City would not be obligated for anything beyond such generally applicable operational policies and practices in effect at the time of the signing of this Agreement unless expressly set forth in this Article.

G. Modification of Amount

The parties have negotiated this Article in recognition of the City's interest in achieving fiscal certainty in its obligation under this Agreement. If changes in the law, rules or agency interpretation occur under this Agreement which result in new or increased City costs related to reclassifying current employee uniform items as of the signing of this agreement into PPE, the City shall be entitled to reduce the amounts of any limit or credit as follows:

1. Reclassification of uniforms shall reduce the amount by the actual increased cost resulting from reclassification but not more than \$500 per year;
2. Reclassification of shoes shall reduce the amount by the actual increased cost resulting from reclassification but not more than \$175 per year.

H. Each of the City's obligations in this Article which involve any change in existing agreements or funding levels are conditioned upon City Council approval of amended agreements and appropriation of funds in future fiscal cycles, and, absent same, such obligations shall not become effective or applicable. In the event that City Council fails to approve any agreements, employees shall be entitled to the credit amount upon presentation of actual expense receipts for approved uniform items.

Section 2. Personal Protective Equipment (PPE).

The City acknowledges and accepts its obligations under state and federal law pertaining to Personal Protective Equipment (PPE). The City agrees to meet or exceed the Texas Commission on Fire Protection's (TCFP) specifications for PPE, or the most recent TCFP PPE standards in the event the TCFP is dissolved. Any disputes concerning compliance with state or federal law shall be resolved by resorting to the appropriate state or federal agency. Any disputes concerning specifications for PPE shall be subject to the grievance and arbitration articles of this agreement as contractual issues.

ARTICLE 21.

PARKING

The City shall provide, without cost to the employees assigned to Fire Station Number 1, Fire Department Administration Building, Communications, and Arson, adequate parking space adjacent to or near those work locations.

ARTICLE 22.

INCENTIVE PAY

Section 1. Educational.

- A. Fire Fighters holding certain Associates, Bachelors, or Masters degrees shall receive educational incentive pay. The degrees shall be from an accredited learning institution of higher education recognized by the State Board of Education in the State in which the college resides and accredited by the Southern Association of Colleges and Schools or a similar accrediting organization recognized by the United States Department of Education.
1. Fire Fighters holding an Associate's Degree shall receive one hundred eighty five dollars (\$185.00) per month.
 2. Fire Fighters holding a Bachelor's Degree shall receive two hundred ninety dollars (\$290.00) per month.
 3. Fire Fighters holding a Masters Degree shall receive three hundred and ten dollars (\$310.00) per month.
- B. Employees may submit degrees by January 1, April 1, July 1, and October 1 of each year to be eligible for the educational incentive payments the beginning of the following quarter (Jan. 1, Apr. 1, July 1, and Oct. 1). Payments called for hereunder shall be made in accordance with current payroll policies of the City.
- C. The City shall provide \$75,000 each year to fund a Tuition Reimbursement Program. Tuition reimbursement funds shall not carry over to the next fiscal year. The Tuition Reimbursement Program shall be implemented and administered in accordance with Department policy or its successor. In the event that employees have received or will receive funding from another source such as grants, scholarships, etc., including receipt of state funding for fire science courses, tuition reimbursement shall become a secondary source of funding and shall not serve as double payment for tuition expenses.

Fire Fighters shall be entitled to receive reimbursement for tuition, fees, on-campus parking and the price of required text(s) at a college or university for course hours in an accredited degree program. Reimbursement shall be made in accordance with the following schedule:

Course Grade	Amount of Reimbursement
A	100%
B	90%
C	80%
D or F	0

Such reimbursements for tuition and fees shall not exceed amounts set by Texas state-supported institutions for similar or related courses and shall only be paid at Texas residency rates.

Section 2. HAZ-MAT Incentive.

Personnel assigned to the Hazardous Material (Haz-Mat) Team shall receive a \$100.00 per month incentive during their active assignment.

Section 3. E.M.T. Certification Pay.

- A. Employees holding a Basic E.M.T. certificate obtained from the State and as a result of having completed a City-approved course of instruction shall receive the following incentive payments based upon years of service as a Basic E.M.T. (EMT-B) with the City for as long as certification is maintained and the employee is authorized to perform by the Medical Director:

Beginning of certification through 4 years of service as a Basic E.M.T. \$ 60.00 per month

Beginning of 5th year through 8th year of service as a Basic E.M.T. \$110.00 per month

Beginning of 9th year of service as a Basic E.M.T. \$160.00 per month

Effective October 1, 2012:

Beginning of certification through 4 years of service as a Basic E.M.T. \$ 75.00 per month

Beginning of 5th year through 8th year of service as a Basic E.M.T. \$125.00 per month

Beginning of 9th year of service as a Basic E.M.T. \$175.00 per month

- B. If a paramedic transfers out of paramedic duties in EMS, Communications or Aviation to function as a Basic E.M.T., and has continuously maintained his or her certification as a paramedic or obtains a Basic E.M.T. certification, then all prior service as a paramedic in EMS, Communications, or Aviation shall be counted toward determining the level of incentive to which he or she would be entitled.

Section 4. E.M.T. Training for Non-Certified Employees.

The City shall train sixty (60) employees in E.M.T. certification whose initial employment date was prior to January 1, 1979, or who do not currently possess an E.M.T. certification. Training will be offered in order of seniority and will be paid for by the City. The Chief shall have the right to adjust work schedules of employees receiving training in order to best accomplish this mission.

Section 5. Paramedic Certification Pay.

- A. Employees attending the initial paramedic training course shall receive \$50 per month until such time they become eligible for paramedic incentive pay. The employee must be assigned to the class for more than one-half of the month to qualify. No partial payment shall be made for attending one-half (1/2) or less of the first calendar month of the initial paramedic training course.
- B. All employees who are certified by the State and as a result of having completed a City-approved course of instruction as Paramedics and who actually work in EMS, Communications, and/or Aviation, and maintain authorization by the Medical Director shall receive the following incentive payments based upon years of service as a Paramedic with the City:

Beginning of assignment through 4 years of service as a Paramedic \$200.00 per month

Beginning 5th year through 8th year of service as a Paramedic \$250.00 per month

Beginning 9th year of service as a Paramedic \$300.00 per month

Effective October 1, 2012:

Beginning of assignment through 4 years of service as a Paramedic \$250.00 per month

Beginning 5th year through 8th year of service as a Paramedic \$300.00 per month

Beginning 9th year of service as a Paramedic \$350.00 per month

- C. Unless otherwise specified in this Article, these amounts shall be paid to the Paramedic for so long as the individual is employed by the Department and actually works as a Paramedic in EMS, Communications, and/or Aviation. (The use of administrative leave shall not be cause to deny incentive pay under the previous sentence. However, a Paramedic who has expended all available sick leave and is thus either eligible for or actually utilizing the provisions of Article 24, Volunteering for Injured Firefighters, will no longer be entitled to receive incentive pay.)

- D. Should a Paramedic transfer or be assigned to a position outside of EMS, Communications, and/or Aviation and yet maintains his Paramedic certification, he shall be entitled to E.M.T. certification pay but not Paramedic certification pay.
- E. Should a Fire Fighter receive training on his own time and at his own expense at a City-approved school, he shall be eligible for E.M.T. certification pay.
- F. If a Paramedic leaves EMS, Communications, and/or Aviation and later returns, and if said employee has continuously maintained his certification as a Paramedic, then all prior service as a Paramedic in EMS, Communications, or Aviation shall be counted toward determining the level of incentive to which he would be entitled.
- G. Each E.M.T. or Paramedic assigned to EMS, Communications, or Aviation working an applicable shift for one-half (1/2) or more of any calendar month shall be entitled to the incentive pay as previously provided for that assignment for the full month. No partial payment shall be made for working less than one-half (1/2) of the calendar month.

Section 6. Firefighting Division Paramedic Certification Pay.

- A. Effective October 1, 2012, all employees who are certified by the State and as a result of having completed a City-approved course of instruction as Paramedics and who actually work as a Paramedic in the Firefighting Division, and maintain authorization by the Medical Director shall receive the following incentive payments based upon years of service as a Paramedic with the City:

Beginning of assignment through 4 years of service as a Paramedic \$150.00 per month

Beginning 5th year through 8th year of service as a Paramedic \$200.00 per month

Beginning 9th year of service as a Paramedic \$250.00 per month

- B. Unless otherwise specified in this Article, these amounts shall be paid to the Paramedic for so long as the individual is employed by the Department and actually works as a Paramedic in the Firefighting Division. (The use of administrative leave shall not be cause to deny incentive pay under the previous sentence. However, a Paramedic who has expended all available sick leave and is thus either eligible for or actually utilizing the provisions of Article 24, Volunteering for Injured Firefighters, will no longer be entitled to receive incentive pay.) An employee receiving paramedic certification pay under this Section shall not be entitled to E.M.T. pay.
- C. All prior service as a Paramedic in EMS, Communications, or Aviation shall be counted toward determining the level of incentive to which he would be entitled if said employee has continuously maintained his certification as a Paramedic.
- D. Each Paramedic assigned to the Firefighting Division working an applicable shift for one-half (1/2) or more of any calendar month shall be entitled to the incentive pay as previously

provided for that assignment for the full month. No partial payment shall be made for working less than one-half (1/2) of the calendar month.

Section 7. Authorization by the Medical Director and Maintenance of Certification.

- A. Any E.M.T. or Paramedic who scores less than that score set by the Medical Director on the State certification examination will be provided an opportunity to retake the examination. If the employee scores less than that score set by the Medical Director the examination on the second attempt, said employee shall no longer be entitled to E.M.T. or paramedic incentive pay as of the date of scoring less than that score set by the Medical Director.
- B. Any E.M.T. or Paramedic who is de-authorized by the Medical Director shall no longer be entitled to E.M.T. or paramedic incentive pay until such time he is re-authorized by the Medical Director.
- C. The parties agree that any E.M.T. or paramedic de-authorized by the medical director shall have the right to receive designated tutorial assistance, as designated by the medical director, on City time and expense.
- D. Any paramedic transferred to fire suppression as a result of de-authorization shall lose years of service credits for the years of paramedic service, for the purpose of computing E.M.T. incentive pay.

Section 8. Special Duty Pay.

- A. The Fire Chief may assign personnel to special tasks or duties, i.e., computer analyst, video specialists, etc., and when doing so will agree to compensate them at the next-higher rank than the rank they occupy for the duration of the assignment. This special duty does not create a position.
- B. The Fire Chief may assign an employee as airport coordinator; and, when doing so, will compensate him at the rate of the next higher rank above that held by that employee so designated for the duration of the designation.

This Section of the Agreement may not be used to eliminate classified positions (ranks).

Section 9. Arson Assignment Pay.

- A. All employees selected for assignment to the Arson Division shall receive fifty dollars (\$50.00) per month beginning the first full month after the start of the Police Training Academy program until such time they receive their arson investigator certification.
- B. All certified arson investigators, assigned to the Arson Division shall receive three hundred fifty dollars (\$350.00) per month assignment pay during each month of actual assignment.

- C. Each certified arson investigator assigned to Arson working an applicable assignment for one-half (1/2) or more of any calendar month shall be entitled to assignment pay for that assignment for the full month. No partial payment shall be made for working less than one-half (1/2) of the calendar month.
- D. Effective October 1, 2012 Sub-Section B shall no longer apply.

Section 10. Aviation Incentive.

- A. Employees initially assigned to the Aviation Division or assigned to Station 22 in support of Stinson Municipal Airport, said employee shall receive fifty dollars (\$50.00) per month until such time they receive their Crash Rescue Fire Fighter certification. The employee must be assigned for more than one-half of the month to qualify for this incentive. No partial payment shall be made for working one-half (1/2) or less of the calendar month.
- B. Each certified Crash Rescue Fire Fighter assigned to the Aviation Division or assigned to Station 22 in support operations at Stinson Municipal Airport shall receive a one hundred dollar (\$100.00) per month incentive pay during his or her active assignment.

Section 11. Technical Rescue Team Incentive.

- A. Employees initially assigned to the Technical Rescue Team shall receive fifty dollars (\$50.00) per month until such time the employee is deemed qualified by the Fire Chief. The employee must be assigned for more than one-half of the month to qualify for this incentive. No partial payment shall be made for working one-half (1/2) or less of the calendar month.
- B. Each Fire Fighter assigned to the Technical Rescue Team determined to be qualified by the Fire Chief shall receive a hundred dollar (\$100.00) per month incentive during his or her active assignment.

Section 12. Training Instructors Incentive.

- A. Employees initially assigned to the Training Division shall receive fifty dollars (\$50.00) per month until such time they receive their Instructors Certificate. The employee must be assigned for more than one-half of the month to qualify for this incentive. No partial payment shall be made for working one-half (1/2) or less of the calendar month.
- B. Each employee assigned to the Training Division who holds an Instructors Certificate shall be entitled to receive three hundred and fifty dollars (\$350.00) per month incentive during his or her active assignment to Training.
- C. Effective October 1, 2012 Sub-Section B shall no longer apply.

Section 13. Fire Inspectors Incentive.

- A. Employee initially assigned to the Fire Prevention Division shall receive fifty dollars (\$50.00) per month until such time they receive their Inspectors Certificate. The employee must be assigned for more than one-half of the month to qualify for this incentive. No partial payment shall be to employees made for working one-half (1/2) or less of the calendar month.
- B. Each employee assigned to the Fire Prevention Division who holds an Inspectors certificate shall be entitled to receive one hundred dollars (\$100.00) per month incentive during his or her active assignment to the Fire Prevention Division.
- C. Effective October 1, 2012 Sub-Section B shall no longer apply.

Section 14. Language Skills Pay.

Employees shall be entitled to Language Skills Pay upon satisfactory completion of the testing requirements for proficiency as set forth in Administrative Directive 4.38. The amount shall not be less than the amount payable to other City employees.

Section 15. Services Division Incentive.

- A. Each employee assigned to the Services Division shall be entitled to receive one hundred dollars (\$100.00) per month incentive during his or her active assignment to the Services Division.
- B. Effective October 1, 2012 this Section shall no longer apply.

Section 16. Fire Certification Pay.

Fire Fighters who hold a Basic, Intermediate, Advanced or Master Certification issued by the Texas Commission on Fire Protection shall receive Fire Certification pay based on the following monthly schedule:

Basic	Intermediate	Advanced	Masters
\$65.00	\$95.00	\$135.00	\$175.00

Certification payments shall be made monthly at the same time that E.M.T. and Paramedic incentive pays are made. The Fire Chief shall have the right to require the Fire Fighter to produce a copy of the certification or other valid verification prior to approval for the employee to receive such payment.

Section 17. Field Training Officer (FTO).

The Fire Chief shall have the authority to establish an FTO program and to set an amount for FTO incentive pay during the term of this agreement.

Section 18. Preemption.

Article 37 Section 2 is applicable to this Article.

Section 19. Administrative Assignment Incentive.

Effective October 1, 2012, all non-appointed, forty (40) hour per week employees permanently assigned to a forty (40) hour schedule receive four hundred and fifty dollars (\$450.00) per month. The employee must be assigned for more than one-half (1/2) of the month to qualify for this incentive. No partial payment shall be made for working one-half (1/2) or less of the calendar month. This incentive does not apply to an employee who receives special duty pay under Section 8 of this Article.

ARTICLE 23.

SICK LEAVE

Section 1. Definitions.

A. For purposes of this Article, the following definitions shall be used:

1. **"undocumented absence"** shall mean any absence due to sick leave without a physician's certificate, regardless of duration during any working day. When counting such absences, all or part of each working day or shift shall count as a separate absence.
2. **"physician's certificate"** shall mean a note provided by a physician licensed to practice medicine which states that he or she has examined the employee and that the employee was unable to work due to illness. It is the parties intent that the purpose of the information to be provided by the physician's certificate is to document the physician's determination that the employee has a bona fide illness, injury, or disability, which has existed for the entire period of the leave being claimed.
3. **"physician licensed..."** shall mean and include medical doctors (M.D.), osteopaths (D.O.) chiropractors (D.C.) and dentists (D.D.S.) who have met applicable licensing requirements, as the context of the condition or illness requires.
4. **"voluntary overtime"** shall mean overtime which is neither holdover time nor when an employee is ordered to work overtime.

Section 2. Circumstances Requiring Physician's Certificate.

- A. All employees shall be required to submit a physician's certificate under the following circumstances:
1. All twenty-four (24) hour shift employees using more than two (2) consecutive working days of sick leave shall be required to provide a physician's certificate. All other

employees using more than three (3) consecutive working days of sick leave shall be required to provide a physician's certificate.

2. All employees who use sick leave by leaving during a shift and returning during that shift or by reporting for duty after the shift begins shall be required to provide a physician's certificate.
3. All employees who utilize sick leave in conjunction with his/her scheduled work day or work shift immediately preceding or following any other form of leave, excluding Bereavement Leave, (i.e. annual leave, military leave, administrative leave, leave without pay) shall be required to provide a physician's certificate. Undocumented sick leave and military leave may not be taken together during the same shift.
4. All employees who utilize sick leave on the following holidays shall be required to provide a physician's certificate: New Year's Day, Independence Day, Thanksgiving Day, Christmas Eve, Christmas Day, New Year's Eve.
5. Once an employee has had six (6) undocumented absences in a fiscal year, he/she is required to provide a physician's certificate for any absence thereafter for the remainder of the year unless the employee has sick leave accrued but unused in an amount equal to or exceeding 50% of the total amount of sick leave he/she has accrued during his/her service in the Fire Department.

Section 3. Timeliness of Issuance of Physician's Certificate.

- A. A physician's certificate must have been issued within 24 hours of the date on which the obligation arises.
- B. If an employee is not successful in obtaining a physician's certificate issued within 24 hours from the time the obligation arises, the employee may elect to be treated under either of the following provisions. The election shall be made upon return to work, at the time the physician's certificate is provided:

1. Forfeiture of Annual or Holiday Leave

- a. In the event that the physician's certificate is not issued within 24 hours, as provided herein, each duty hour after the obligation arises—until the time of issuance, shall be forfeited from either accumulated vacation time, or holiday leave equal to the number of hours.
- b. Failure to provide such documentation shall not be cause for discipline, other than loss of paid leave, unless it can be shown that intentional misrepresentation has occurred.
- c. It is understood and agreed to that annual or holiday leave that is forfeited under this section may not be used as, or in lieu of, scheduled leave. Any employee who intentionally calls in sick for the purpose of taking unscheduled leave is in violation of this provision.

2. Verification of Attempt to See Physician Within 24 Hours

- A. If an employee attempts to see a physician within 24 hours, and is unable to do so, he or she may provide documentation from a licensed medical service provider to that effect to obtain approved leave.
- B. In the event of a subsequent sick leave request during the same fiscal year that is not accompanied by a physician's certificate issued within 24 hours, the employee shall lose sick leave credit for both of the absences, which shall not qualify as sick leave, but shall be forfeited from either accumulated vacation time, or holiday leave equal to the number of hours which the employee was absent. If the period of absence exceeds one shift or one day, the leave forfeited shall be twice the shorter period of time.
- C. Failure to provide such documentation shall not be cause for discipline, other than loss of paid leave, unless it is shown that intentional misrepresentation has occurred.

Section 4. Additional Doctor's Certification and Confidentiality of Medical Information.

- A. Upon request by the Chief, employees shall provide additional (in addition to a physician's certificate) doctor's certification describing the nature of the illness which certification shall be mailed or delivered in a sealed envelope marked "confidential" to the Chief.
- B. The City shall not release any information concerning any condition or diagnosis, or any associated medical information or test result that is non-discloseable or confidential under state or federal law which may be contained on the physician's certificate to any person or entity without the written consent of the employee, or an order by a court of competent jurisdiction.
- C. If the employee seeks confidential treatment of any matter disclosed by the physician, these certificates shall be delivered or mailed, in a sealed envelope, marked "Medical Information - Confidential" directly to the appropriate office at Fire Administration.
- D. No employee or physician shall be expected to provide any information about conditions which are privileged or confidential by law, or which involve a clearly unwarranted invasion of personal privacy. This would include, but is not limited to STD'S or HIV. If a diagnosis or treatment relates to such conditions, the physician may complete this form with a conclusion that the patient's condition prevented work during the specified time period.

Section 5. Loss of Voluntary Overtime.

- A. After two undocumented absences during any fiscal year, an employee will be ineligible for one (1) voluntary overtime opportunity, which loss shall occur either within two (2) shifts or the next opportunity. For each undocumented absence thereafter, the employee shall lose another overtime opportunity in the same manner.
- B. After six (6) undocumented absences during the fiscal year, the Fire Chief has the right to deny eligibility for voluntary overtime for sixty (60) days, on a reasonable basis. Written

guidelines for implementing this provision shall be established and disseminated within the department. The Fire Chief may revise these guidelines from time to time.

Section 6. Other Provisions.

- A. After an employee who is eligible for regular retirement has an absence in excess of thirty (30) consecutive working days, the Chief has the right to require a physician's certificate and may require the employee to submit to a Fitness for Duty Examination.
- B. The Union recognizes the City's existing right to contact or attempt to contact an employee either in person or by telephone in a reasonable manner while he/she is on sick leave. Failure of the employee to be at his/her residence, at a location pre-coordinated with his/her
- C. Supervisor, or attending medical treatment shall be grounds for disciplinary action in accordance with existing rules and regulations. The Chief will establish a procedure for discretionary exemptions from this rule and the provisions of Section 2 for individuals with long term illnesses, injuries or extended hospitalization.
- D. The Union recognizes the City's existing right to enforce a policy that the provision of fraudulent medical documentation or deliberately erroneous statements in connection with the provisions of this article shall be grounds for disciplinary action in accordance with the rules and regulations.
- E. Nothing in this Article shall be construed to limit in any fashion the right of the Chief to enforce rules and regulations or administrative policies that are not in conflict with this Agreement or State Law.

Section 7. Sick Leave Buy Back.

Beginning January 2014 the City will buy back at the Fire Fighter's discretion up to ten (10) accrued sick leave days per year on a one-for-one basis at the Fire Fighter's regular rate of pay, provided that the employee requests the buyback in writing on a form provided by the City by the end of the last business day in January; and the employee has a balance at that time of not less than seven (7) months worth of sick leave. Sick Leave buy back will be paid in the first pay period of May of the same year. The total amount available for Sick Leave buy back under this Section shall not exceed \$1.9 million for the first fiscal year, and shall be capped to increase 5% per fiscal year thereafter. Sick Leave buy back shall be paid based on seniority in the Department.

ARTICLE 24.

SICK LEAVE BANK

In the event a Fire Fighter is suffering from an illness or injury which has been diagnosed by a physician as temporary and such diagnosis is provided to the City in writing, and in the event the said Fire Fighter has used all of his/her sick leave, vacation, and all other leaves, he/she may be

entitled to the benefits outlined below for a period not to exceed three hundred sixty five (365) calendar days for the same or related illness or injury as per Union policy.

1.
 - a. The City shall draft twelve (12) hours sick leave per Fire Fighter after the employee completes his/her probationary period. Any Fire Fighter who desires not to participate must contact the City in writing prior to the completion of his or her probationary period.
 - b. The City shall notify the Union after the sick leave bank hours drop below 480 hours, and in concurrence with the Union President, shall be allowed to draft three (3) hours from all Fire Fighters.
2. Fire Fighters may request utilization of the sick leave bank hours by submitting their name to a Committee of three (3) appointed by Local 624.
3. No Fire Fighter judged totally and permanently disabled by a physician shall be entitled to utilize this plan to extend the time of his retirement.
4. The Committee may donate sick leave drafted from each participant in equal amounts up to three (3) employees. If more than three (3) employees are using this, sick leave bank then an amount shall be deducted from the sick leave bank equal to 1.25 times the amount of actual hours used.

ARTICLE 25.

HEALTH BENEFITS

Section 1. Active Fire Fighters Health Benefits.

- A. The City shall provide all active Fire Fighters who are eligible with family medical benefits and shall pay the full cost of said benefits as agreed upon herein. The minimum benefits provided are those as stated in the Master Contract Document for the City of San Antonio, San Antonio Professional Fire Fighters Association and San Antonio Police Officer's Association Bargaining Unit (hereinafter referred to as "Master Contract Document"), which is attached and incorporated herein as Attachment II. Provisions and benefits specified in the Master Contract Document shall not be reduced during the life of this Agreement; however, the City reserves the right to change carriers or plan administrators at any time at its discretion. While the City is prohibited from reducing the provisions and benefits specified in the Master Contract Document during the life of this Agreement, a determination of what medical service is medically necessary for a particular patient, or any reduction in the usual and customary charge for that medical service, will not be construed as a reduction in the benefits; provided that the determination is made in accordance with the procedure and criteria described in the Master Contract Document.
- B. Active Fire Fighters covered under this Agreement shall be granted the option of entering into or exiting from the civilian benefits program as provided for by the City to substitute for the basic program as outlined in this Agreement. Said option must be exercised by the active

Fire Fighter during the re-enrollment period between the dates of October 1, and December 31, of each calendar year.

Section 2.

This Agreement, and the Master Contract Document for health benefits adopted herein, shall control the available health benefits during the term of this agreement, for active Fire Fighters.

Section 3.

Health care benefits for active Fire Fighters shall not be terminated, altered, modified or reduced, during the term of the Agreement, except by amendments or successors to this Agreement.

Section 4.

It is understood and agreed that the provisions of this Agreement and the Master Contract Document for health benefits have been drafted in substantial and material reliance upon existing provisions of federal and state law concerning employee health benefits. Any change in federal or state law or regulations which changes the obligations of either party, or the applicability or extent of Medicare benefits, or materially alters the assumptions relied upon in negotiations shall entitle the City or the Union to reopen negotiations concerning health benefits.

Section 5. Other Benefits.

- A. **Definitions.** The term "Trusts" as used in this Section shall refer to the San Antonio Police Officers and Firefighters Benefit Plan and Trust, which provides optical and dental services, and the San Antonio Police Officers and Firefighters Prepaid Legal Plan and Trust, which provides legal services to members of the San Antonio Police Department and the San Antonio Fire Department.
- B. **Amounts.** During the term of this Agreement, the City will pay a monthly amount for each employee as shown by the schedule below for dental, optical and prepaid legal benefits under the Trusts. Furthermore, neither the City nor the Union may change the amounts paid or allocated for the respective benefits as shown in the schedule during the term of this Agreement.

	Optical/ Dental Plan	Prepaid Legal Plan
Employees with dependents	\$89.50	\$32.00
Employees without dependents	\$43.50	\$32.00

- C. **Audits.** The Union shall ensure that the Trusts will conduct annual independent audits at no additional costs to the City. The Union shall further ensure that the Trusts shall provide a copy of each annual independent audited financial report to the City, through its Finance Director, within thirty (30) days of receipt of the audit by the respective Trust.

The City reserves the right, at its sole discretion, to conduct an audit of said benefit plans at the City's expense any time during the term of this Agreement. Should the City decide to conduct such an audit, the Union shall ensure that the Trusts make available to the City all relevant documentation within a reasonable time.

- D. **Use of Benefits.** With respect to the prepaid legal benefits, it is understood that no employee may use the benefits for the purpose, in whole or in part, of implementing and/or initiating legal action against the City, any of its agents, officers, and/or assigns.

Exclusive Trust. The Union shall ensure that all funds paid by the City pursuant to this section are used for the exclusive benefit of the employees and that said funds shall not be commingled with the funds of any other organization, entity, or Union, nor shall said funds be used for any other purpose other than that provided for herein.

- E. **Payment and Change in Plans.** During the term of this Agreement, the Union may change providers for Supplemental Benefits (Dental/Optical and Legal). In the event that the Union makes a proposal to change benefit providers, the Union shall submit the same in writing to the City.

- F. **Copies of Trust Plan.** The Union will provide to each employee a summary of each Trust plan and will provide up-to-date copies of the Trust Plan Documents to the Human Resources Department and the Union Office.

- G. **Determination letter.** It shall be the sole responsibility of the Association to maintain the tax-exempt status of the benefit received under this Section. In accordance therewith, the Association shall provide to the City, through its Director of Finance, a copy of the Internal Revenue Service Determination Letter regarding the tax-exempt status of the benefit received under this Section. Said Letter shall be received by the City no later than ten (10) days from commencement of this Agreement.

ARTICLE 26

RETIREE HEALTH BENEFITS

House Bill 2751, enacted by the Texas Legislature effective October 1, 2007, removed retiree health benefits from the collective bargaining process. Retiree health benefits are now governed exclusively by the provisions of Vernon's Texas Civil Statutes, Article 6243(q), a copy of which, in its current form, is attached hereto as Attachment III. The provisions governing retiree health benefits contained in the Collective Bargaining Agreement in effect at the time House Bill 2751 was enacted are attached hereto as Attachment III.

Should Article 6243(q) be repealed, without any substitute legislation under Texas law, the legislation in effect at the time of repeal will be subsumed into the current Collective Bargaining Agreement, and will be subject to negotiation at a reopener, or the next scheduled contract negotiations, by mutual agreement of the parties.

ARTICLE 27.

MISCELLANEOUS

Section 1.

Should a Fire Fighter be ordered to another station after reporting to his assigned or temporary assigned duty station, mileage will be paid to the next station after reporting to his assigned or temporary assigned duty station. Mileage will be paid to the next station at the existing City rate per mile, or a minimum of \$2.00, whichever is greater. In order to be reimbursed for mileage expenses, a Fire Fighter so affected must turn in to the Chief each quarter on October 1, January 1, April 1, and July 1, of each calendar year expense vouchers requesting reimbursement for mileage expenses during the preceding quarter, unless the Chief provides a policy for an alternate submission procedure. Failure of an employee to timely file his voucher request shall result in the employee's waiver and relinquishment of any entitlement to said reimbursement of mileage expense.

Section 2.

Suspensions. Employees suspended up to a maximum of six (6) working days may, at the employee's discretion, forfeit either accumulated vacation time or holiday leave equal to the suspension. The employee shall have ten (10) calendar days from his receipt of notice of the suspension to decide whether or not he wishes to forfeit accumulated leave or exercise his appeal rights pursuant to Local Government Code Chapter 143. The provisions of this Article shall apply solely to suspensions which are agreed to by the employee, and no appeal to the Commission or to arbitration may be instituted on suspensions where the employee has forfeited accumulated vacation or holiday leave.

Section 3.

Except when workload dictates or in the case of regular alarms or Departmental announcements, all stations shall be on selective call for twenty-four (24) hours per day.

Section 4.

The City shall make a copy of this Agreement available at each station and a copy provided to each Fire Fighter.

Section 5.

The Chief shall have the authority at any time to require a Fire Fighter to submit to psychological evaluation or treatment and/or medical evaluation, at the City's expense, to be performed by a qualified psychologist, psychiatrist, counselor, therapist, or medical doctor chosen by the City. It is understood and agreed that should an employee refuse to submit to a psychological and or medical examination, or refuse to provide the results of such examination, such refusal shall constitute a refusal to obey a command, for which discipline may be imposed. To the extent

allowed by law, the City will indemnify the Union from liability in connection with any disciplinary matters arising under this section.

Section 6.

Effective with the execution of this Agreement, the Chief shall have the right to assign (which assignment shall not be unreasonably withheld), a Fire Fighter to light duty not to exceed one (1) calendar year from the date of the assignment based on the recommendation of a qualified physician. The Chief, in his sole discretion, may extend the duration of an employee's light-duty assignment.

Section 7.

After an employee has two (2) uses of emergency leave in a calendar year, for each subsequent use of emergency leave, the Fire Chief shall have the right to deny eligibility for the next voluntary overtime opportunity which would otherwise have been made available to the employee.

Section 8.

In the event of a Fire Fighter death which occurred in the line of duty, the City shall pay \$5,000 over and above the City's life insurance/accidental insurance benefit to the beneficiary to assist with funeral and/or related costs. The City shall issue payment directly to the beneficiary listed on the employee's life insurance within ten (10) working days of receipt of the proper request for said payment.

Section 9.

Employees separating from the Department shall have their pay for accrued vacation leave calculated at base pay plus longevity.

ARTICLE 28.

EMPLOYEE WELLNESS AND FITNESS

Section 1. Purpose.

The purpose of the physical fitness plan is to ensure that employees of the Department are physically capable of meeting all of the physical demands inherent in the job. It is the intent of the parties that the elements of the plan be directed to establishing such job-related physical fitness. The City and the Union recognize that each employee of the Department has individual physical characteristics which must be taken into account in assessing and applying the requirements of the plan.

Section 2. Fitness Requirements for New Employees.

- A. Effective with the first class to enter the Fire Academy after the approval of the 2002 Agreement, all new employees must agree to maintain a standard of fitness throughout their careers with the San Antonio Fire Department.
- B. The City and the Union will meet and come to an agreement on the standard of fitness to be maintained and the regulations, policies, penalties, medical considerations, etc. which will be necessary to implement this section.

Section 3. Fitness Program for Existing Employees.

The City and the Union shall meet and come to an agreement on a physical fitness program for existing employees which is not punitive in nature, but is instead aimed at promoting physical fitness among all employees of the Department. Any discipline which may be issued for non-compliance with the physical fitness program or plan must be corrective in nature and must take into account the individual characteristics of the employee involved.

The City agrees to promote compliance with the plan through education, incentives, interdepartmental counseling and other positive approaches.

Section 4. Wellness Program.

In the spirit of improving the quality of life of all uniform employees, the City and the Union have met and have come to an agreement in principle on a mandatory wellness program for all employees, which is not punitive in nature, but is instead aimed at promoting the overall health and well-being among all employees of the Department. The City and the Union further agree that the parties shall approve a wellness program, and once approved, any substantive changes to the program can only be made by mutual agreement of the parties.

Section 5.

Nothing in this Article or Agreement shall require the City or the Union to violate the statutory provisions of the Americans with Disabilities Act.

ARTICLE 29.

DRUGS AND ALCOHOL

Section 1. General.

- A. It is agreed that efficiency and safety in the work place is necessary and required in order to carry out the mission of the Fire Department. Both parties support the proper and responsible implementation of this Article in the interests of public safety and the safety of Fire Fighters.

- B. Therefore, it is understood that the use of alcohol, drugs, or other controlled substances by members of the bargaining unit without proper prescription or other authorization while on duty or in the work place is detrimental to the operation of the Department and is clearly prohibited by this Agreement and the rules and regulations of the Fire Department.
- C. The City agrees to form an employee assistance drug committee with the Association. The Fire Chief and the Association President shall designate two (2) individuals to serve on the committee; the committee shall assemble and prepare materials to inform Fire Fighters of the issues and dangers of substance abuse to the Fire Fighters, the colleagues in the department, the public, and their families. The materials shall include an inventory and presentation of available community and City resources for dealing with emotional issues, depression, family conflict, domestic violence, alcohol abuse, substance abuse, and other mental and medical issues which are a part of the substance abuse paradigm. The committee will make materials and presentations available to all Fire Fighters.
- D. The City and the Union agree that Fire Fighters may be called upon in hazardous situations without warning, and that it is imperative to the interest of the Fire Fighters and the public to ensure that no Fire Fighter is substance impaired. In order to further their joint interest in protecting Fire Fighters and the public, the City and the Union agree to mandatory random drug testing as described in this section.

Section 2. Post Accident Testing.

- A. The parties agree to require post accident mandatory alcohol and drug testing under the testing guidelines set forth in this Article of any Fire Fighter involved in a vehicular accident in a City vehicle where the following conditions exist:
 - 1. The Fire Fighter was operating the City vehicle at the time of the collision; and
 - 2. The accident results in a death, serious injury to any person requiring medical treatment, or significant property damage.
- B. The City agrees to conduct post accident drug and alcohol testing of any Fire Fighter involved in a vehicular accident in a City vehicle that voluntarily requests testing, regardless of whether the above conditions are met.
- C. A positive drug or alcohol test under this Section shall not constitute conclusive proof of impairment or use, but shall create a rebuttable presumption subject to challenge through the grievance procedure. The presumption may be rebutted by competent evidence, in which case the determination of impairment or use shall be based upon the weight of the evidence, as determined by the arbitrator. Absent contrary evidence, the positive drug or alcohol test shall be sufficient to prove use or impairment.

Section 3. Reasonable Suspicion Testing.

- A. The Union acknowledges and recognizes the right of the City to investigate possible alcohol or drug abuse by bargaining unit members which impairs job performance and to require employees to submit to various specified, approved and recognized medical procedures, provided reasonable suspicion exists, in accordance with proper procedure and applicable law, as well as the terms of this Agreement. In this regard, it is understood that the City shall adequately train its supervisory personnel who have authority to investigate the reasonable suspicion standard in detecting symptoms and effects of alcohol and/or controlled substance abuse. Reasonable suspicion is defined as the actions, appearance or conduct of an employee which are indicative of or consistent with the use and/or presence in the employee's body of a controlled substance or alcohol. Reasonable suspicion is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. This Article in no way establishes or permits testing in violation of a right provided by this Agreement.
- B. In addition to reasonable suspicion testing as provided for above, the parties acknowledge the right of the City to require employees who receive special assignments to be tested. As used herein, special assignments shall include assignments to Haz-Mat, Paramedic, and/or Arson units where the assignment requires (1) the carrying of a firearm; (2) contact with or access to extremely dangerous materials; and (3) the administration of controlled substances. Testing must be approved pursuant to recognized medical procedures in accordance with applicable clinical protocols as well as the terms of this Agreement. Employees applying for such positions must be informed at the outset that such testing will be required prior to promotion/assignment to the position sought. In no event will employees be tested under this subsection as a result of involuntary assignment to an affected position, unless said assignment is the result of a promotion. Employees subject to tests under this subsection will be given a minimum of five (5) days notice of the actual test, and shall take the test, and the City must administer the same, in a manner which assures the employee's privacy to the greatest extent possible consistent with the City's need to preserve the integrity of the test procedures and results.

Section 4. Random Testing.

- A. One Hundred percent (100%) of Fire Fighters of all ranks, including the Chief, shall be susceptible to mandatory testing for illegal drugs and controlled substances, during each calendar year on a fair and impartial statistical basis at the City's expense. The fair and impartial statistical basis (in which each employee has an equal chance of being selected during a calendar year) shall be by a non-discriminatory computerized program operated and certified as non-discriminatory by an independent firm hired by the City, and the employee shall be tested upon being selected by the computer. The computer program shall be designed to ensure that no employee shall be randomly tested more than once in any twelve (12) month period.

- B. Upon notice of selection for random testing, any employee shall provide a urine sample in accordance with the policy or protocol established by the testing laboratory. Failure to provide a sample may be considered insubordination, and may be the basis for suspension or indefinite suspension. The Medical Review Officer (MRO) shall be contacted for instructions in the event of a claimed inability to provide a sample.
- C. The City and the Union have a mutual interest in ensuring that drug impaired Fire Fighters do not perform Fire Department duties. The City and the Union agree that the purpose of the mandatory drug testing policy is not to punish an employee who has not violated the Fire Department's rules, regulations, policies or procedures. The City and the Union are committed to the principle that the mandatory drug testing policy for Fire Fighters is designed and shall be administered to result in disciplinary action only against those Fire Fighters who have violated the Fire Department's rules, regulations, policies and procedures.
- D. The City will utilize a U.S. Department of Health and Human Services (DHHS) approved laboratory in performing urinalysis for drug detection. The laboratory will provide chain-of-custody procedures and documentation necessary to meet federal standards. Specimen collection and chain of custody procedures will ensure that specimen security, proper identification, and integrity are not compromised. A MRO will provide oversight to trained personnel on the collection and testing of urine samples. The Medical Review Officer shall be a qualified physician designated by the City.
- E. The employee will provide a urine specimen in a location that affords privacy. The collector will seal and label the specimen, initiate a chain of custody document, and prepare the specimen and accompanying paperwork for shipment to the drug testing laboratory. Each urine specimen will be subdivided into two bottles labeled as "primary" and "split" specimens. Both bottles will be sent to a laboratory where only the primary specimen confirms the presence of illegal, controlled substances, the employee will have seventy two (72) hours from the time they are notified by the MRO concerning positive test result to request the split specimen be sent to another DHHS-certified laboratory for a second opinion analysis. If either analysis is below the positive threshold levels, this shall constitute a negative result and the employee shall not be subject to further random testing for at least twelve (12) months. Both the primary and the split specimen shall be maintained for one year to be available in the event of legal or contractual disputes or further questions. In addition, employees may at their own expense request to have another urine specimen administered at a physician's office of the employee's choice and accompanied by the testing personnel provided such testing is administered within four (4) hours of the initial notification for testing. Results of any such test taken at the employee's expense shall be provided to the City only if the employee chooses to release the results to the City.
- F. Sample testing procedures shall conform to scientifically accepted analytical methods and procedures and shall include confirmation of positive test results by gas chromatography/mass spectrometry (GC/MS). Before the results of a drug test may be used as a basis for any action, an MRO will be employed to determine if the test result is

positive due to illicit drugs, or prescribed or over-the-counter drugs or food substances. In the event the MRO determines laboratory analysis found the specimen to be positive, but circumstances leading to the test result were other than illicit drug use, the test will be reported as negative to the City.

Section 5. Threshold Levels Revealed by Testing.

The parties have agreed that the following levels shall be determinative in any drug testing administered under this Article.

- A. The five (5) drugs to be screened and the test cutoff levels in nanogram/milliliter are as follows:

	<u>Drugs</u>	<u>Cutoff Levels</u>
1.	Marijuana metabolite	50 ng/ml
2.	Cocaine Metabolite	300 ng/ml
3.	Opiate metabolite	2,000 ng/ml
4.	Phencyclidine	25 ng/ml
5.	Amphetamines	1,000 ng/ml

- B. Concentrations of a drug at or higher than the above levels shall be considered a positive test result on the initial drug screening test.

1. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending."
2. A positive test result on the initial drug-screening test will automatically require a confirmation drug test be performed.

- C. The same five (5) panel drug screen test will be conducted on each confirmation drug test as was conducted on the initial test. The five (5) drugs to be screened and the test cutoff levels in nanogram/milliliter for the confirmation drug test are as follows:

	<u>Drugs</u>	<u>Cutoff Levels</u>
1.	Marijuana metabolite	15ng/ml
2.	Cocaine metabolite	150ng/ml
3.	Opiates:	

- | | | |
|----|------------------|-------------|
| a. | Morphine | 2,000 ng/ml |
| b. | Codeine | 2,000 ng/ml |
| c. | 6-Acetylmorphine | 10 ng/ml |
| 4. | Phencyclidine | 25ng/ml |
| 5. | Amphetamines: | |
| a. | Amphetamines | 500 ng/ml |
| b. | Methamphetamine | 500 ng/ml |

D. Concentrations of a drug at or higher than the above levels shall be considered a positive test result on the confirmation drug screening test. A positive test result under this section shall not constitute conclusive proof of impairment or use, but shall create a rebuttable presumption subject to challenge through the grievance procedure. In the event that the employee appeals any disciplinary action to arbitration after a positive test result under this section, the losing party shall pay all costs of the proceeding. The employee is the "losing party" under this section if the arbitrator finds drug or alcohol impairment in violation of department policies, rules or regulations, irrespective of any modification or reduction in discipline.

E. Alcohol testing procedure shall be as follows:

1. Alcohol testing shall be conducted by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing Device (EBT). The employee will provide a breath sample. If the employee's alcohol concentration is greater than or equal to .04, a second confirmation test will be performed in accordance with established EBT protocol.
2. An employee's failure or refusal to provide a breath sample will result in a determination that the employee's alcohol concentration is greater than or equal to .04.
3. Confirmation that an employee's alcohol concentration is greater than or equal to .04 shall result in the implementation of those steps set forth under Section 8(B)(1) of this Article (not applicable to post accident testing under Section 2 above).
4. A positive test result under this Section shall not constitute conclusive proof of impairment or use, but shall create a rebuttable presumption subject to challenge through the grievance procedure.

5. Concentrations less than the thresholds listed herein, or initial positives not confirmed by the confirmatory testing shall be disregarded by the City, and may not be referred to or used at any time for any employment or disciplinary purpose whatsoever by the City.

Section 6. General.

- A. The thresholds listed above shall apply to all testing under this Article. Employees will complete a pre-testing consent form each time a test is conducted as part of a testing procedure under this Article. Failure to do so may be insubordination, and just cause for discipline. This is in addition to any signed acknowledgement forms which may have been obtained at the time of employment or any other occasion.
- B. In all drug testing under this Article, only conclusive results are to be reported to the City. A positive urinalysis test will be confirmed by a GC/MS test and reviewed by a Medical Review Officer before considered conclusive. Both tests must be positive or the results are considered inconclusive, thereby causing a negative test result to be reported to the City.
- C. In all drug testing under this Article, individuals with positive test results for drugs will be notified by the MRO (or a para-professional acting as his delegate) in person or by telephone. An interview will be conducted to determine if there is an alternative medical explanation of the drugs found in the employee's urine specimen. The employee is entitled to request and receive an in-person interview with the MRO prior to release of a positive result. If the employee provides appropriate documentation and the MRO is satisfied with the explanation, the drug test result is to be reported as negative to the City.
- D. Concentrations less than the thresholds listed herein, or initial positives not confirmed by the confirmatory testing shall be disregarded by the City, and may not be referred to or used at any time for any employment or disciplinary purpose whatsoever by the City.
- E. Once the employee has been notified of a drug test under any provision of this Article, an employee does not have any right to self report use or impairment under this Article, and thereby escape the consequences of violating the Department's rules and regulations, except as provided in this Article; however, it shall be within the Chief's discretion to permit self reporting and to withhold or suspend discipline based upon all relevant facts and circumstances.

Section 7. Confidentiality.

All records pertaining to the department required drug and/or alcohol tests shall remain confidential to the extent allowed by law, unless offered in evidence in a disciplinary appeal. Drug test results and records shall be stored in a locked file under the control of the Chief or his designee. The Chief will maintain original copies submitted by the laboratory. No access to these files shall be allowed without written approval of the Chief.

Section 8. Rehabilitation Treatment and Discipline for Substance Abuse.

A. The parties have these joint objectives in this Article of the Agreement:

1. To preserve the Chief's right to discipline or terminate an employee for on-duty use or impairment in violation of Fire Department Rules and Regulations;
2. To create disincentives for the use and abuse of substances; and
3. To provide a means, together with incentives, to seek and obtain treatment and rehabilitation for any employee who is involved in substance abuse.

B. A positive drug and/or alcohol result under this Article resulting from random testing or reasonable suspicion testing shall have the following consequences:

1. 1st positive result: The employee shall be suspended from the Fire Department for a period of time not to exceed thirty (30) days. The employee shall further be required to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem. Specifically, the employee must successfully complete an appropriate rehabilitation program as determined by a drug and/or alcohol abuse evaluation expert. The employee may utilize sick leave, vacation or unpaid administrative leave as necessary to complete the rehabilitation program. Verification of the employee's successful completion of the program must be provided to the City by the rehabilitation facility no later than six (6) months from the date of the initial positive result and constitutes a condition precedent to the employee's return to work. Prior to returning to duty the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.04 and/or controlled substance test with a verified negative result. In addition, the City may continue to monitor any employee under this provision by conducting unannounced follow-up testing not to exceed twenty four (24) months following the employee's return to work. An employee's failure to meet the requirements to return to duty herein shall automatically place the employee under Section 8(B)(3) below.
2. The preceding paragraph does not apply to an employee with a positive test result as a result of post accident testing, and the employee shall be subject to discipline up to and including termination depending on the level of impairment and overall circumstances of the incident or episode involved.
3. 2nd positive result: The employee is subject to disciplinary action, up to and including termination.
4. Following the employee's return to work as provided for under Section 8(B)(1), the employee may self-report any relapse into drug or alcohol use to the employee's immediate supervisor who shall immediately take steps necessary to remove the employee from regular duty. Any reported relapse will require the employee to complete another rehabilitation program (under the terms and conditions set forth in Section 8(B)(1) prior to returning to duty. No disciplinary action shall be taken against any employee that self-reports any relapse into drug

or alcohol use so long as the self-reporting occurs prior to the employee completing any follow-up testing as provided for under section 8(B)(1).

5. An employee may not unreasonably circumvent the follow-up testing requirements set forth in Section 8(B)(1). To that end, an employee that has been informed of a required follow-up test may not self-report any relapse into drug or alcohol use and thus avoid the follow-up test and the potential disciplinary action associated with a second positive result on more than one (1) occasion.
- C. Any employee who voluntarily seeks rehabilitation and treatment shall be entitled to the same leave and benefits that are otherwise applicable under leave policies and the existing coverage definitions in the Master Contract for Health Benefits, provided, however, that the Chief's right to discipline or terminate for on-duty use or impairment shall not be affected by this provision. An employee entitled to rehabilitation and treatment is not exempted from disciplinary action for violation of any other rules and regulations of the department (e.g. off duty DWI, regulations concerning leave, etc.).
- D. The City shall implement a drug and alcohol abuse education program. As part of that program, information will be provided on the availability of any EAP services under City programs or other outside service providers. The City will provide employees with literature and audio-visual materials and a copy of the drug and alcohol-free workplace policy as well as penalties for violating said policy.

Section 9. Union Representation of Members.

While it is understood that the Union is unequivocally opposed to the use of alcohol or drugs in the work place as well as the abuse of such substances under any condition and further agrees to cooperate toward the prevention of such abuse and strongly supports the prohibition of the use of drugs or alcohol in the work place and the proper enforcement of the Department's rules and regulations, the Union, retains the right to fairly and properly represent any aggrieved member of the bargaining unit by reason of the application of this Article, including but not limited to what the Union may consider as unwarranted or unreasonable investigations, search or the imposition of discipline.

ARTICLE 30.

GRIEVANCE PROCEDURE

Section 1. Scope of Procedure.

The purpose of this Article is to provide a just, equitable, and expeditious method for resolving disputes between the City and the Union (or employees) concerning all aspects of the employment relationship between the City and bargaining unit employees, and concerning the bargaining relationship between the City and the Union. To that end, the parties hereby agree and stipulate as follows:

- A. All disputes concerning the interpretation and/or application of the terms of this Agreement shall be submitted, if at all, to the grievance/arbitration procedure as called for herein. Failure to initially pursue grievance/arbitration in these instances shall be the basis for a plea in abatement in response to any suit or claim filed with a court of law and/or administrative agency.
- B. Employee claims of violation of statutory or constitutional rights may be submitted to the grievance/arbitration procedure or may be pursued by means of judicial and/or administrative appeal; provided that once the employee has elected to file a lawsuit and/or administrative claim, all issues raised by the dispute or claim will be resolved in such lawsuit and/or administrative process, and no grievance may be filed concerning the same subject matter. It is recognized that claims falling under this subparagraph may be included with related claims of contract violations. In such circumstances, the City shall not be entitled to abatement of a suit involving the contract claims, related to the statutory or constitutional claims asserted, for failure to grieve such contract matters initially. If the employee elects to use the grievance/arbitration procedure to raise statutory or constitutional claims, such matters may not thereafter be appealed to court except as provided by this Article.
- C. Claims alleging violation of Article 11, Section 1, or state or federal laws prohibiting employment discrimination including discrimination for having initiated or filed a claim for workers' compensation benefits, as prohibited by Texas Labor Code Section 451.001, shall not be subject to the grievance/arbitration procedure.
- D. Disciplinary matters subject to the appeals procedure provided by Texas Local Government Code Chapter 143 shall not be subject to the grievance/arbitration procedure; provided that such matters, at the employee's election, will be subject to the Civil Service Commission or grievance/arbitration procedure under a just-cause standard, if Texas Local Government Code Section 143.057 is repealed or amended to eliminate the optional appeal of disciplinary matters to a Hearing Examiner. If the provisions of Chapter 143 are not repealed, and should the employee elect to proceed to the optional appeal of disciplinary matters to a Hearing Examiner, the examiner shall be selected as called for in Section 5 (A) hereof. The powers, duties, and/or obligations of said arbitrator/hearing examiner shall likewise be as provided for in this Agreement and applicable provisions of the Texas Local Government Code, Chapter 143.

Section 2. Time Limits.

The parties shall act diligently and exercise good faith to adhere to the time limits set forth in this Article, unless such time limits are waived or extended by mutual agreement. In the event the employee or Union fails to meet the time limit at any step of the grievance procedure, the grievance shall be considered satisfied and no further action need be taken; provided, that where the grievance concerns a matter within the jurisdiction of the courts, the employee may file suit if the grievance is rejected due to failure to comply with a time limit set forth in this Article. Failure by the City to meet the time limits at any step shall be considered a denial of the grievance which will allow the Union or employee, at their option, to proceed to the next step. Time limits begin to run on the date of a party's actual receipt of an appeal or response. When

either party provides an appeal or response by mail, its timeliness shall be judged by the postmark on the envelope. When either party provides an appeal or response by facsimile transmission or via email, its timeliness shall be judged by the date printed by the facsimile transmission device or email. For any delivery of an appeal or response that is not hand delivered the parties are required to provide written confirmation to the other party. Where a deadline falls on a Saturday, Sunday, or legal holiday, the deadline will be extended to the next day which is not a Saturday, Sunday, or legal holiday.

Section 3. Relief through the Chain of Command.

The Union or any employee covered by this Agreement having a matter which is felt to be a grievance shall make a reasonable effort to resolve the matter through the appropriate chain of command via telephone, email or face to face meetings.

In the event the matter is not resolved through the Chain of Command, the employee may submit a grievance to the Union Grievance Committee.

Section 4. Steps of Grievance Procedure.

A. Initial Filing and Grievance Committee Review

1. In order to be considered, a grievance raising contractual issues must be submitted to the union grievance committee within thirty (30) calendar days of the grievant's actual or constructive knowledge of the event. A grievance raising non-contractual issues must be submitted with the union grievance committee within one hundred eighty (180) calendar days of the grievant's actual or constructive knowledge of the event.
2. The Union or any employee covered by this Agreement having a matter which is felt to be a grievance shall submit the grievance in writing to the Union Grievance Committee. The grievance shall be submitted on a form to be provided by the City and must include (a) a brief statement of the grievance and the facts on which it is based; (b) the section of the Collective Bargaining Agreement which has been violated; (c) the remedy or adjustment, if any, sought; (d) the employee's signature; and (e) where "maintenance of standards" is a basis for the grievance, the specific standard(s) alluded to must be identified. As used herein, "maintenance of standards" includes all statutory or other non-contract provisions incorporated herein through the Maintenance of Standards Clause found at Article 9.
3. Within three (3) business days after receipt of a grievance, the Union Grievance Committee shall provide a courtesy copy of the grievance to the Fire Chief. The copy may be delivered via hand delivery, facsimile transmission or email.
4. If the Union Grievance Committee decides in its sole discretion that no grievance is found to exist, no further action shall be required; provided, that if any employee grievance concerns matters appealable to court, e.g., statutory violations, the employee retains the option to file suit if his/her grievance is rejected.

5. The Union Grievance Committee shall review the grievance and if a grievance is found to exist for reasons stated by the employee or reasons known to the Committee, the Committee shall process the grievance by passing the grievance to the Fire Chief within fifteen (15) business days from receipt thereof.

B. Fire Chief's Response.

1. The Fire Chief or his designee shall respond to the grievance and shall render a decision to the Union Grievance Committee, in writing, within fifteen (15) business days from receipt thereof.

C. Appeal to City Manager.

1. If a grievance is not resolved the Union Grievance Committee shall submit the grievance, in writing, to the Director of Human Resources within fifteen (15) business days from receipt of the decision and a courtesy copy will be provided to the City Manager or his/her designee.
2. The City Manager or his/her designated representative shall review the matter and shall render a decision in writing to the Union Grievance Committee within fifteen (15) business days.

D. Submission to Arbitration.

1. If the grievance is not resolved the Union Grievance Committee shall have fifteen (15) business days from receipt of the City Manager's decision to submit the matter to arbitration.
2. Arbitration will be invoked by delivering a letter to the Director of Human Resources and a courtesy copy will be provided to the City Manager or his/her designee.

Section 5. Arbitrator Selection.

- A. The Human Resources Director or his/her designee shall within five (5) business days from the date the grievance is submitted to arbitration, request a list of seven (7) qualified neutrals from the American Arbitration Association that are able to begin the hearing within one hundred twenty (120) calendar days. The representative for the grievant and the representative of the Fire Chief may mutually agree on one of the seven (7) qualified neutrals. If the representatives do not agree, the representatives shall alternatively strike the names on the list of seven (7) qualified neutrals within seven (7) calendar days after receipt of the list, and the remaining name shall be the arbitrator. The grievant's representative shall strike the first name. All parties shall act to complete the selection process at the earliest possible date. The arbitrator shall be promptly notified of his selection. The parties will not have ex parte communication with the arbitrator. Communication with the arbitrator will be through the parties, counsel for the parties, or the parties representative, jointly.

- B. At a date previously agreed upon, the arbitrator shall convene the hearing at a place mutually convenient to all parties. The arbitrator shall hear and take evidence of all issues presented as raised by timely-filed grievances. The hearing shall continue from day to day until all such evidence has been received and all parties have "rested." Transcripts and post-hearing briefs may be utilized at the discretion of the Arbitrator. If a transcript is utilized, a transcript by a duly-authorized court reporter will be taken of the hearing and shall be the only official transcript thereof. Both parties to the proceeding shall be entitled to representation of their own choosing, the expense of which must be borne by the respective party.
- C. The arbitrator shall make a reasonable effort to issue his/her award within thirty (30) calendar days after the date the hearing ends or, if transcripts and/or post-hearing briefs are required, within thirty (30) calendar days of receipt of the transcript or receipt of the parties' post-hearing briefs, whichever occurs later.

Section 6. Witnesses and Expenses.

- A. The following expenses shall be shared equally by the parties: arbitrator's fees and expenses and the cost of the hearing transcript. Each party will bear its own attorney's fees and costs; provided that:
 - 1. Should the arbitrator find that grievance upon which he rules is specious, he may in fact award the "prevailing party" (singularly) "reasonable attorney's fees" as defined in section 2 below.
 - 2. Should the matter proceed to court, the court shall have the discretionary authority to grant attorney's fees, including the costs of the arbitration proceedings (but not the grievance proceedings). A reasonable attorney's fee for the City shall be eighty five dollars (\$85.00) per hour, and for the employee, shall not exceed the actual rate agreed and charged, not to exceed one hundred dollars (\$100.00) per hour.
- B. The City shall compensate all witnesses called by either party at their straight-time rate; provided, however:
 - 1. The witness called is scheduled for duty when called to appear.
 - 2. The individual's identity and a brief statement as to the relevancy of his expected testimony has been provided the City five (5) days in advance of the hearing.

Any witness called by the Union and/or the grievant who has not been identified and/or who is not scheduled for duty shall be due no compensation or administrative leave from the City.

- C. Witnesses shall be scheduled by agreement between the parties so as not to unduly interrupt the mission of the Department. The arbitrator shall have the authority, based upon the summary statement of the witnesses, to determine whether or not the testimony of the witness is required or is merely duplicitous or cumulative, then the City shall have no obligation to pay for the witness' appearance.

- D. The grievant shall not be compensated for time spent at the hearing and/or in preparation thereof, nor shall he be entitled to administrative leave for any such time.

Section 7. Arbitrator's Authority—Contract Cases.

- A. This section applies to all issues involving the application or interpretation of this Agreement; provided, that where the sole issue of contract interpretation involves the Maintenance of Standards provision, and the underlying standard is a statute or constitutional provision, this section shall not apply.
- B. For issues subject to this section, the award of the arbitrator shall be final and binding upon the City, Union and employees. In making his/her award, the arbitrator shall be limited to interpreting and applying the provisions of this Agreement; he/she shall have no authority to add to, subtract from, or modify the terms of this Agreement as negotiated between the parties.
- C. The arbitrator shall have full power to take steps necessary to ensure a fair hearing for all concerned, which power shall include, but is not limited to: ordering a party to provide information in its possession or control which is reasonably necessary to the other party's prosecution of its case; ordering a party to make available to testify a person within its control; issuance of witness subpoenas; and taking reasonable steps to ensure that no undue delays in the proceedings occur, consistent with the right of all concerned to a full and fair hearing.
- D. The arbitrator shall have the authority to provide in his/her award for such relief as is necessary to make the prevailing party whole for all economic losses suffered as a result of a violation of the terms of this Agreement.

Section 8. Arbitrator's Authority—Non-Contract Cases.

- A. In all cases which present issues, e.g., statutory claims which do not involve interpretation or application of the terms of this Agreement, the procedures specified in this section shall apply; provided, that where a case raises both contract and non-contract claims, the arbitrator's award as to contract claims shall be final and binding on the City, Union, and the employee.
- B. In cases subject to this section, the parties will be entitled to engage in discovery as provided in the Texas Rules of Civil Procedure, and the arbitrator is authorized to issue subpoenas, to resolve disputes concerning the appropriateness of a party's discovery requests, and to enter such other orders as may be necessary to effectuate the discovery process. As soon as practicable, after the arbitrator's appointment and agreement to serve, the arbitrator and the parties' representative shall hold a conference, by telephone or otherwise, to set a reasonable period for discovery and a hearing date. In no case shall the period for discovery exceed ninety (90) days, except by mutual agreement of the parties.

- C. The provision of Section 6(C) of this Article are equally applicable to Section 7 cases.
- D. For issues subject to this section, the award of the arbitrator (both as to facts and the law of the contract) shall be final and binding; provided, that either party may appeal such award to state district court pursuant to Texas Local Government Code Chapter 174 on the grounds that it is clearly contrary to the provisions of a statute or the Constitution (state or federal), or is not supported by substantial evidence as indicated in the record made before the arbitrator. Any such appeal must be filed within thirty (30) days of the date of arbitrator's award.
- E. The arbitrator shall have the authority to provide in his/her award for such relief as a court with jurisdiction over such matter would be entitled to award, including injunctive and equitable relief, compensatory and exemplary damages.

ARTICLE 31.

EXHAUSTION OF REMEDIES

Section 1. Exhaustion.

The City, the Union, and the Fire Fighters covered herein, shall be required to exhaust all available remedies through grievance and/or the Civil Service Commission prior to proceeding to a court of law, state or federal administrative agency, or other regulatory body, except as provided in Article 30, Grievance Procedure. Failure to do so will act as a plea in abatement to any such court, administrative body, and/or regulatory agency proceeding until the exhaustion of remedies provided for in this Agreement have been completed to finality.

Section 2.

If, at any time after a decision and/or award of the Civil Service Commission and/or an arbitrator, any affected party contests or challenges the decision or award in any other legal proceeding, the following shall apply:

- A. The decision and award of the arbitrator and/or the Commission must be upheld, unless the contesting party can establish the award was not supported in whole or in part by substantial evidence and/or that the award of the arbitrator and/or the Commission was capricious.
- B. As a condition precedent to the filing of any subsequent action challenging the award of the arbitrator and/or the Commission, the affected party (as used here, "party" shall mean the Union and/or the City) must file a cost bond in the minimum amount of the sum of the arbitrator's fees and expenses and the fees of the court reporter who took the transcript of the arbitration proceeding.

Section 3.

Should any party be a part to any action by any other party contesting and/or challenging the award of the arbitrator and/or the Commission, the party may, pursuant to the terms of this

Agreement, request the court or administrative body to which the action has been addressed to reimburse it/them for all costs of court, including but not limited to reasonable attorney's fees, for having to defend said action. This remedy shall be in addition to any other remedy to which the party may be entitled, including but not limited to those as specified above and/or elsewhere in this Agreement. Should either party, after having pursued grievance/arbitration or Civil Service Commission proceedings, sue in a court of law, then that court has the authority to grant as a portion of its award all costs including attorney's fees, including but not limited to the attorney's fees expended and/or generated as a result of the arbitration proceedings (but not the grievance proceedings). It is agreed that as used herein the term "reasonable attorney's fees", shall be in accordance with Article 30, Grievance Procedure, Section 6. Witnesses and Expenses (A)(2).

ARTICLE 32.

PROMOTIONS

Section 1. Definitions.

A. Seniority - For purposes of this Article, each Fire Fighter shall be given one (1) point added to only the passing score on any written promotional examination for each year as a classified Fire Fighter in the San Antonio Fire Department. In no event shall the number of such seniority points exceed ten (10). "Classified Fire Fighter" is meant to include service as a Fire Trainee and a Probationary Fire Fighter. Seniority is defined as all years of service, whether interrupted or uninterrupted, on the San Antonio Fire Department, and not merely the 1st continuous period of service. Accrual of seniority points shall begin with the first day of employment as a Fire Trainee in the Fire Academy.

B. Eligibility.

1. Fire promotional examinations shall be open to all Fire Fighters who have held a classified position with the San Antonio Fire Department for minimum required continuous years, immediately below that rank for which the examination is to be held. (This period shall consist of time spent by the Fire Fighter in actual service with the Department. Any absences other than for scheduled Annual Vacation/Holidays, Line-of Duty (LOD) or for serving on active military duty, in excess of fourteen (14) consecutive days will cause the Fire Fighter to be required to remain in that position and rank for a period of time equal to the time of such absence. Time spent on leave for less than fourteen (14) days shall not apply. Example: A Fire Fighter is an Engineer as of 1/1/87. He is off work on Sick Leave for fifteen (15) days. He would be eligible for promotional examination to the position of Lieutenant as of 1/16/89. Fire Fighters who receive a retroactive promotion will be entitled to use the retroactive promotion date for purposes of determining eligibility to take future promotional examinations.)
2. The two (2) year continuous period required for eligibility to take the promotional examination for the rank of Fire Engineer shall commence with the date the Fire Fighter entered the Fire Academy. If the employee was hired after 6/30/07 the minimum

continuous period required for eligibility shall be three (3) years from the date the employee entered the Fire Academy.

3. A Fire Fighter who has completed two (2) continuous years of service as Fire Engineer shall be eligible for promotion to the rank of Lieutenant. The two (2) year continuous period required for eligibility on promotion shall commence with the date he was promoted to Fire Engineer. If the employee was hired after 6/30/07 the minimum continuous period required for eligibility shall be three (3) years from the date the employee was promoted to Fire Apparatus Operator.
4. A Fire Fighter who has completed two (2) continuous years service as a Fire Lieutenant shall be eligible for promotion to the rank of Captain. The two (2) year period required for eligibility on promotion shall commence with the date he was promoted to Fire Lieutenant.
5. A Fire Fighter who has completed two (2) continuous years service as a Fire Captain shall be eligible for promotion to the rank of District Chief. The two (2) year continuous period required for eligibility for promotion shall commence with the date he was promoted to Fire Captain.
6. Any Fire Fighter that would become eligible to take an exam during the month that the exam is given, shall be eligible to take the exam.
7. In the event the scheduling of a promotional examination is prior to the ninetieth (90th) day of the vacancy, any Fire Fighter that would become eligible for such exam if it was given on the ninetieth (90th) day would be allowed to take such exam. For the purposes of calculating the ninetieth (90th) day, day one (1) begins from the first day of vacancy. Such Fire Fighter will also need to have met the criteria for eligibility for such exam as if it were given on the ninetieth (90th) day.
8. Promotional examinations for the rank of Fire Engineer, Lieutenant and Captain shall be administered during the same month each year as illustrated by example below:

	Month Examination Given	Date List Effective
Lieutenant	February 2012	First Day of March 2012
Captain	March 2012	First Day of April 2012

Fire Engineer promotions examination will be administered as soon as possible after execution of this Agreement in compliance with the "unscheduled written examination" procedure set forth in Section 1.B.9.

Each eligibility list shall be valid for a period of one (1) year from the effective date listed above. For example, the Fire Captain eligibility list shall be effective from April 1, 2012 through March 31, 2013 at 11:59 p.m.

9. If a promotional eligibility list for a rank is exhausted more than ninety (90) days prior to the next scheduled promotional exam for that rank, the City may conduct an unscheduled promotional exam for that rank as follows:
 - A. The date of the unscheduled written examination and the list of source materials for the examination shall be posted in accordance with the provisions of Local Government Code Chapter 143.
 - B. The unscheduled exam will be conducted in accordance with the requirements of this Article.
 - C. The resulting Eligibility List will be created in accordance with the requirements of this Article, and will be effective for a period of one (1) year beginning on the first day of the month following the month the unscheduled written examination was given as illustrated under Section 1.B.8.
 - D. The date of the next scheduled exam will be administered during the same month which is one (1) year after the date of the unscheduled written examination.
10. In order to implement the above promotion examination schedule it is agreed that in the event that a vacancy occurs prior to implementation of the above schedules, the time limits under Chapter 143 to hold an exam and make the permanent appointment shall be superseded, subject to the right to back pay below. This does not include either the required ninety (90) day posting of study material prior to the promotional exam, or the thirty (30) day notice provision for posting notice of the exam. Persons promoted during the implementation of the new schedule above shall retain the right to back pay as provided under Chapter 143, so long as those persons would have been eligible to take the test within ninety (90) days of the vacancy. In the event a person becomes eligible following the ninety (90) day period, that person will only be entitled to back pay back to the date of that person's eligibility.
11. In the case of a Force Majeure Occurrence which prevents the conduct of the promotional exam, the actual date of the exam may be rescheduled for up to sixty (60) days. Notice of the examination is sufficient if posted prior to the ninetieth (90th) day before the scheduled date of the examination notwithstanding the actual date if rescheduled. In the event of a rescheduling, no further notice of the examination is required other than the new time, place, and date of the rescheduled examination. This provision specifically preempts Chapter 143 of the Texas Local Government Code, including but not limited to sections 143.029 and 143.107.

A "Force Majeure Occurrence" shall mean an occurrence beyond the control and without the fault of the City. Without limiting the generality of the foregoing, force majeure occurrences shall include: acts of nature (including fire, flood, earthquake, storm, hurricane, ice storm or other natural disaster), war, invasion, acts of foreign combatants, terrorists acts, military or other usurped political power or confiscation.

C. Seniority in Rank.

1. The employee with the most time in a classified rank shall be considered the senior in rank.
2. Where employees of classified ranks other than the rank of Fire Fighter have been promoted at the same time, seniority in rank shall be determined by the employee's placement on their respective eligibility list.
3. Where employees of the rank of Fire Fighter have the same amount of time in that classification, seniority in rank shall be determined by their badge number.

D. Return From Military Service.

Effective with the signing of this Agreement Fire Fighters who were serving on active military duty as members of the Armed Forces and who were eligible promotional candidates according to the rules as set out by USERRA when a Department promotional exam was offered, who did not take the exam, may apply within thirty (30) calendar days after notice by the City of their rights and obligations under this subsection upon return to the Department from active duty, to take the promotional exam given for that rank. The consulting firm who constructs the promotional exam given for each applicable rank will as part of the exam create an "A" and "B" exam for each test. Each test will be similar in construction and material covered. Fire Fighters covered by this section will be offered the ability to take the "B" test on their return and after being given the same amount of study time as officer who took, the original "A" exam. If the Fire Fighter's score would have resulted in a promotion if it had been achieved on the exam(s) missed due to active military service, the Fire Fighter must be promoted to the next available vacancy in that rank. Seniority in rank and retroactive back pay owed will be established as of the date the Fire Fighter would have been promoted based on the score made at the time, as if he or she had not been on active military service. This provision is intended to comply with requirements of the Federal Uniformed Services Employment and Reemployed Rights Act (USERRA), and to supersede the terms of Section 143.032(b) of the Texas Local Government Code.

Section 2. Study Materials Committee.

This selection section applies to future selection of source materials and posting of notice beginning January 2012.

The Chief shall establish a separate committee for the selection of proposed study materials for each promotional examination by rank. This committee will be comprised of two (2) members appointed by the Chief and two (2) members appointed by the President of the Association and shall be facilitated by the SAFD Human Service Division. This Committee will consult with the test consulting company to assure support from the job analysis throughout the materials selection process. Each member of the Committee will sign a pledge of confidentiality, agreeing to not release any information pertaining to any study materials selected by the Committee to be forwarded to the Chief in order to maintain the security of the selection process. Members of the Committee shall rank the material collectively and forward their recommendations to the Chief. Study materials for all ranks shall not be the same for any two (2) consecutive years.

After reviewing the recommendations, the Chief shall consult with the test consulting company to assure support from the job analysis. After his consultation, the Chief shall make the final decision and forward his selections and/or changes to the consulting company hired by the City to create the test. The committee membership will be changed after each testing cycle. The committee members appointed by both the Chief and the President of the Association will hold the same rank or higher as the position being tested for.

A listing of all potential materials from which promotional examination questions may be taken shall be posted annually each January for examinations to be administered within the one (1) year period beginning the following April. Such material may not be used unless available at the time of the posting of the study materials list.

Section 3. Promotion to Fire Engineer, Lieutenant, and Captain.

- A. Vacancies in the ranks of Fire Engineer, Lieutenant, and Captain shall be filled by competitive written examination in accordance with Chapter 143 Local Government Code and the rules established by the Fire Fighter and Police Officer Civil Service Commission not inconsistent herewith; however, a passing score of seventy (70) shall be considered minimum for eligibility for promotion.
- B. The City shall engage an outside bonded consultant to prepare written promotional examinations for each rank.
- C. All eligible candidates for promotions to a particular rank shall be given the identical examinations applicable to that rank in the presence of each other. The examinations will consist of multiple choice written questions, which shall have predetermined correct answers to enhance the objectivity of the examination. In addition, the preparer must certify at least seventy five percent (75%) of the questions on each examination for each rank must be newly composed and never before seen on any previous examinations of any rank given by that preparer for the City of San Antonio.
- D. The preparer of the examination shall deliver the examination sealed and numbered to the Civil Service Director who is charged with the responsibility for the security of all promotional examinations. The examination shall remain sealed until opened in the presence of the participants.
- E. All questions formulated by the outside consultant (and their correct answers) shall be derived from the materials selected by the Chief as study materials in accordance with this Section.

Section 4. Promotion to District Chief.

Persons having held the rank of Captain for a period of two (2) continuous years shall be eligible for promotion to the rank of District Chief. In the event all those Captains fail the written portion of the promotion examination which follows, persons holding the rank of Lieutenant for a minimum of five (5) continuous years and all Captains regardless of time-in-rank may be eligible for examination for promotion to District Chief. The promotional examination for the rank of District Chief shall consist of two (2) parts as follows:

- A. Written Examination—Shall consist of questions relating to the duties of the classification of the position to be filled. All notice of written examinations and publishing of study material shall be in accordance with Chapter 143 Local Government Code and the rules established by the Fire Fighter and Police Officer Civil Service Commission. A score of seventy percent (70%) on the written examination shall be considered a passing score. In the event that written examination scores are the same, the ranking of those scores shall be done on the basis of rules established by the Fire and Police Civil Service Commission. All test participants with passing grades, up to a maximum of the top twenty (20), shall be allowed to continue on to the next phase of the examination process, the Assessment Center Board.
- B. Assessment Center Board—Shall consist of three members as follows:
1. Two (2) persons from outside the San Antonio Fire Department who currently hold an administrative position in a Fire Department or fire-related agency in a City of 50,000 or more population or from a state or Federal agency. One such person shall be selected by the City; one shall be selected by the Union.
 2. One (1) person from outside the San Antonio Fire Department who has held an administrative position in the field of personnel management, city management, fire science, or a related field, for a minimum of five (5) years, to be selected by mutual agreement of the City and the Union.
 3. The City and the Union shall agree on guidelines to be presented to the Assessment Center Board for use in their examination.
 4. A minimum score of seventy percent (70%) on the composite factors evaluated by the Board shall be required to pass the Assessment Center Board.
 5. Failure of an applicant to obtain a passing score on the Assessment Center shall disqualify the applicant from further consideration for one (1) year from the date the written examination was administered, unless the list is exhausted, in which event persons on the list shall be eligible for re-examination. The result of the Assessment Center shall not be appealable to the Civil Service Commission or to arbitration through the grievance procedure.
- C. Eligibility List—Within seventy-two (72) hours of the completion of the Assessment Center Process, excluding weekends and holidays, an eligibility list shall be prepared and posted with the respective ranking of all applicants based on the following weights:
1. Written Exam Score 50%
 2. Assessment Center Score 50%
- Total Score 100%

- D. The District Chief eligibility list shall be valid for a period of one (1) year from the day after the date of the written examination unless exhausted, notwithstanding any pending disputes, appeals or litigation concerning an applicant's score or right to promotion. For example: the written exam is given on July 30, 2012, the eligibility list shall be effective from July 31, 2012 through July 30, 2013 at 11:59 p.m.

Section 5. Preemption.

The provisions in this Article shall apply notwithstanding any contrary provisions in Chapter 143, which are expressly preempted.

Section 6. Promotional Probation.

For promotional ranks of Fire Engineer, Lieutenant, Captain, and District Chiefs there shall be a probationary period of six (6) months. During the promotional probationary period, an employee may be demoted by the Chief to the rank from which promoted, and the decision to demote shall not be subject to disciplinary appeal. Upon demotion while holding a probationary promotion, an employee shall resume the competitive rank from which appointed and the salary shall be in accordance with said competitive rank, with service time credited as continuous time in that competitive rank and with all salary increases to which the employee would have been automatically entitled had the employee continuously remained in said competitive rank. If the probationary period is successfully completed, the probationary period shall count as time in grade in the new rank.

Section 7. Chief's Review of Promotability.

Notwithstanding the provisions of this Agreement, the parties understand and agree that in considering a Fire Fighter for promotion the Chief shall have all rights and privileges as contained in Chapter 143 Local Government Code regarding promotability.

Section 8. Assessment Center Promotional Dispute Resolution Procedure.

- A. The purpose of this Section of this Article is to provide for the exclusive remedy available to Fire Fighters who question or challenge the Assessment Center process.
- B. Any Fire Fighter who disputes or challenges the Assessment Center process as contained in this Article as it applies to him shall file a grievance within ten (10) calendar days of the posting of the results of the examination process with the Director of Personnel of the City, which grievance must state in particular and with specifics the Fire Fighter's objection to said process and/or results. Copies of all grievances so filed shall be provided to the Union.
- C. Within fifteen (15) calendar days of the date of the posting of the results of the Assessment Center process, the City and the Union shall meet to review all such grievances timely filed and shall each designate a representative to act in their behalf. These two (2) representatives shall select and agree upon a third, mutually-satisfactory individual who shall act as an independent arbitrator. Failure of the parties' representatives to agree on this third "neutral"

shall result in the parties selecting an arbitrator from the list of six (6) arbitrators previously agreed to in Section 4 of Article 30, Grievance Procedure. The arbitrator or "neutral" so selected shall be notified promptly of his appointment and, simultaneously therewith, the parties in agreement with the arbitrator or "neutral" shall select a date for a hearing of all the grievances so submitted, which date shall be within thirty (30) calendar days.

- D. At the date previously agreed upon, the independent arbitrator or "neutral" shall convene the hearing at a place mutually convenient to all parties. The arbitrator or "neutral" so selected shall hear and take evidence on all of the grievances that were timely filed by Fire Fighters as previously described. The hearing shall continue from day to day until all such evidence has been received. A transcript by a duly authorized court reporter will be taken of the hearing and shall be the only official transcript thereof. All parties to the proceedings, including individual Fire Fighters, shall be entitled to representation of their own choosing, the expense of which must be borne by the respective party.
- E. The arbitrator or "neutral" so selected shall submit a written opinion on each grievance presented and/or heard by him without the benefit of the submission of briefs by the City, the Union, and/or the affected Fire Fighter. The decision of the arbitrator or "neutral" shall be brief and concise and shall recite:
 - 1. The name of the grievant;
 - 2. The issue presented;
 - 3. The decision and award of the arbitrator or neutral.

Unless otherwise mutually agreed by the Union and the City, the decision of the arbitrator or "neutral" shall be rendered within fifteen (15) calendar days of the date the hearing was closed. The decision of the arbitrator shall be final and binding on the City, the Union, and the affected Fire Fighter/grievant.

- F. The fees and expenses of the arbitrator or "neutral" and of the official court reporter shall be borne equally by the Union and the City.
- G. Should at any time after the decision and award of the arbitrator or "neutral" any affected Fire Fighter/grievant contest or challenge the award of the arbitrator in any other legal proceeding, the following shall apply:
 - 1. The decision and award of the arbitrator or "neutral" must be upheld, unless the Fire Fighter/grievant can establish by clear and convincing evidence said award was not supported in whole or in part by substantial evidence and/or that the award of the arbitrator or "neutral" was capricious.
 - 2. As a condition precedent to the filing of any subsequent action challenging the award of the arbitrator or "neutral", the affected Fire Fighter/grievant must file a cost bond in the minimum amount of the sum of the arbitrator's fees and expenses and the fees of the court reporter who took the transcript of the arbitration proceeding.

- H. Should the Union and/or the City be a party to any action by a Fire Fighter/grievant contesting and/or challenging the award of the arbitrator or "neutral", the City and/or the Union may, pursuant to the terms of this Agreement, request the court or administrative body to which the action has been addressed to reimburse it/them for all costs of court, including but not limited to attorneys fees, for having to defend said action. This remedy shall be in addition to any other remedy to which the City and/or the Union may be entitled, including but not limited to those as specified above and/or elsewhere in this Agreement.

Section 9. Appointment to Assistant Chief and Deputy Chief.

- A. The Chief shall have the right to appoint six (6) Assistant Chiefs which rank immediately above the rank of District Chief and rank below the Deputy Chief in the chain of command. The Chief shall have the right to appoint two (2) Deputy Chiefs which rank immediately above the rank of Assistant Chief and rank below the Chief in the chain of command. Effective October 1, 2011 the Chief shall have the right to appoint one (1) additional Deputy Chief for a total of three (3) Deputy Chiefs.
- B. No additional appointed positions shall be created other than by this Article.
- C. Hereinafter, no position in the rank of Assistant or Deputy Chief shall be filled other than by appointment. As vacancies occur in the rank of Assistant Chief, the Chief shall have the right to appoint to the position in accordance with this Section. Appointments to the rank of Assistant or Deputy Chief shall be by the Chief at his sole discretion, provided that the employee promoted is a classified, sworn member of the San Antonio Fire Department and occupies a rank of either Assistant Chief, District Chief, or Captain.
- D. Persons appointed to the rank of Assistant Chief or Deputy Chief shall be subject to overall City policies and regulations and while appointed to this rank shall not be subject to the provisions of Chapter 143 Local Government Code or any of the provisions of this Agreement, unless specifically so provided in this Article.
- E. Any person appointed to the rank of Assistant Chief or Deputy Chief may be suspended or demoted to the rank from which he was promoted at the sole discretion of the Chief without appeal to the Commission and/or Arbitration. Any person appointed to either rank may, further, voluntarily return to the rank from which he was promoted at any time. Upon demotion or voluntary return to the previously-held rank pursuant hereto, the employee shall receive thereafter the full benefits provided in Chapter 143 Local Government Code and this Agreement as if he had served in either rank on a continuous basis throughout his tenure as either Assistant or Deputy Chief.
- F. A person appointed to the rank of Assistant or Deputy Chief may be terminated for cause, provided that such termination shall be subject to appeal in the same manner as applicable to all classified, uniformed employees in the Department.
- G. Except for the positions of Assistant or Deputy Chief, nothing in this Article shall be construed to require the City to create the rank or establish and fill the maximum number of

positions authorized herein. Further, nothing in this Article shall be construed to limit any existing right of the City to create ranks and establish positions in accordance with State law and the City Charter.

H. Assistant or Deputy Chiefs appointed by the Chief pursuant to this Article may receive administrative leave time for work performed in excess of their regularly-scheduled duties. Said leave time may be granted at the discretion of the Chief, subject to scheduling and manpower contingencies that may arise. Said discretionary leave time shall, in no event, exceed that amount of time that said Assistant or Deputy Chiefs have accumulated in excess of their regularly-scheduled work week.

I. Salary and Benefits for Assistant Chiefs and Deputy Chiefs

1. Fire Fighters appointed to the Assistant Chief position by the Chief as provided for in Article 32, Section 8, of this Agreement, shall be compensated at an annual salary of not less than fifteen percent (15%) above the base salary of a District Chief plus thirty (30) years longevity.
2. The Fire Fighters appointed to the Deputy Chief position by the Chief shall be compensated at an annual salary of not less than twenty-four percent (24%) above the base salary of a District Chief plus thirty (30) years longevity.
3. The Fire Fighters holding appointed positions shall be entitled to all benefits as contained in the following specified Articles of this Agreement: Articles 1. Recognition; 2. Definitions; 4. Rules and Regulations, Special Directives, and Administrative Orders; 5. City Protection of Fire Fighters; 7. Payroll Deductions; 10. No Strikes, No Lockouts; 17. Vacations; 18. Holidays; 19. Bereavement Leave; 20. Uniform Items and Protective Equipment; 23. Sick Leave; 25. Benefit Plans; 27. Miscellaneous, Section 5; 28. Employee Fitness; 29. Drugs and Alcohol; 32. Promotions, Section 10; Appointment to Assistant Chief and Deputy Chief; 35. Agreement Binding; 36. Savings Clause; 37. Declaration of the Full Scope of the Agreement; and 38. Duration of Agreement.
4. The Fire Chief, at his discretion, may grant incentive pay as outlined in Article 22. Incentive Pay to qualified appointed personnel. In the event the Chief grants such discretionary incentive pay, all appointed personnel eligible shall receive such incentive pay. To ensure appointed personnel are equally compensated, appointed personnel with paramedic certifications and assigned to the EMS Division shall not receive Paramedic incentive pay but will receive EMT incentive pay.

ARTICLE 33.

FIRE FIGHTER TRAINEES AND FIRE FIGHTER PROBATION

Section 1.

Persons enrolled in the initial Fire Academy shall hold the position of Fire Fighter Trainee. As such, he shall be considered a civilian employee and is not a member of the bargaining unit

covered by this Agreement nor shall he be subject to any of the terms of this Agreement or of Chapter 143 Local Government Code.

Section 2.

Upon completion of the Academy, an employee shall be certified as a Fire Fighter and shall hold the rank of Fire Fighter (Probationary). The probationary period shall be extended by a like period if an employee covered by the provisions of this Article is on leave for a period of thirty (30) consecutive calendar days or more. During this probationary period, excluding time spent as a Fire Fighter Trainee as described in Section 1 of this Article, the employee shall be subject to all provisions of this Agreement and of Chapter 143 Local Government Code with the exception that the Chief, in his sole discretion, shall have the authority to suspend or discharge said employee without appeal through the grievance procedure or to the Fire Fighter and Police Officer Civil Service Commission.

Section 3.

The provisions of this Article shall be exempt from the Maintenance of Standards Article 9 of this Agreement.

ARTICLE 34.

LIMITATIONS ON ACTS

Except as provided in this section of this Article, the Chief and City are precluded from the introduction of evidence or otherwise complaining of any acts or occurrences earlier than the 180th day immediately preceding the date on which the Chief suspends the employee or as specified in Chapter 143.052 of the Local Government Code. Only upon written notice in the original written statement of the Chief may any act or occurrence be admissible in a disciplinary hearing in accordance with this section. Solely to aid the Commission or arbitrator in the assessment of appropriate discipline and not to prove a charge of a violation of Civil Service Rules or for any other purpose, the Chief and the City may introduce evidence of prior disciplinary actions which have not been set aside on appeal as follows:

- A. Where the Chief's original written charges include alleged violations of Civil Service Rules and/or Department Rules and Regulations, Special Directives, and/or Administrative Orders, constituting acts of violence (exertion of physical force so as to injure or abuse), the Chief and the City may introduce prior discipline on such other violations found to have been committed within five (5) years immediately preceding the date of the act(s) charged as contained in said written charges;
- B. Where the Chief's original written charges include alleged violations of Civil Services Rules and/or Department Rules and Regulations, Special Directives, and/or Administrative Orders, concerning drug or alcohol abuse, any prior discipline on such violations found to have been committed within ten (10) years immediately preceding the date of said written charges;

- C. Where the Chief's original written charges allege acts of incompetence, all prior discipline for acts of incompetence may be introduced by the Chief or the City so long as adequate records are maintained; and
- D. Where the Chief's original written charges allege a violation of any other Civil Service Rules and/or Department Rules and Regulations, Special Directives, and/or Administrative Orders. The Chief and the City may introduce prior discipline for a violation(s) of the same rule within two (2) years immediately preceding the date of the charged act, so long as adequate records are maintained.

ARTICLE 35.

AGREEMENT BINDING ON SUCCESSORS AND ASSIGNS ON BOTH PARTIES, REGARDLESS OF CHANGES IN MANAGEMENT, CONSOLIDATION, MERGER, TRANSFER, ANNEXATION, AND LOCATION

This Agreement shall be binding upon the successors and assigns of the parties thereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the consolidation, merger, annexation, transfer, or assignment of either party hereto or by a change geographically or otherwise in the location or place of business of either party hereto.

ARTICLE 36.

SAVINGS CLAUSE

Should any provision of this Agreement be found to be inoperative, void or invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement, it being the intention of the parties that no portion of this Agreement or provision herein shall become inoperative or fail by reason of the invalidity of any other portion of provision.

ARTICLE 37.

DECLARATION OF THE FULL AND FINAL SCOPE OF AGREEMENT

Section 1.

The parties agree that each has had full and unrestricted right and opportunity to make, advance, and discuss all matters properly within the province of collective bargaining. This Agreement constitutes the full and complete Agreement of the parties and there are no others, oral or written, except as specified in this Agreement. Each party for the term of this Agreement specifically waives the right to demand changes herein, whether or not the subjects were known to the parties at the time of execution hereof as proper subjects for collective bargaining; however, it is understood and agreed that the contract may be amended by mutual consent of the parties to this Agreement.

Section 2.

Additionally, in the event that any provisions of this Agreement conflicts or is inconsistent with any provision of Chapter 143 Local Government Code, this Agreement shall prevail, notwithstanding any such provision of the Civil Service Statutes.

Section 3.

The parties understand and agree that where they have agreed to a re-opener upon the occurrence of specific events and/or with the passage of a specified period of time, such re-opener provisions are exempt from the provisions of Section 1 above.

ARTICLE 38

DURATION OF AGREEMENT

Section 1.

Except as specifically provided herein, this Agreement shall be effective upon approval and signing by both parties. It shall remain in full force and effect until the 30th day of September, 2014 and shall continue in effect from year to year until replaced by a successor agreement or until terminated by mutual agreement. In no event shall this Agreement continue in effect after September 30, 2024.

Section 2.

Whenever wages, rates of pay, or any other matter requiring appropriation of money by any governing body are included as a matter for collective bargaining pursuant to this Act, it shall not be the obligation of the Union to serve written notice of request for such collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget, because this Section serves as such notice.

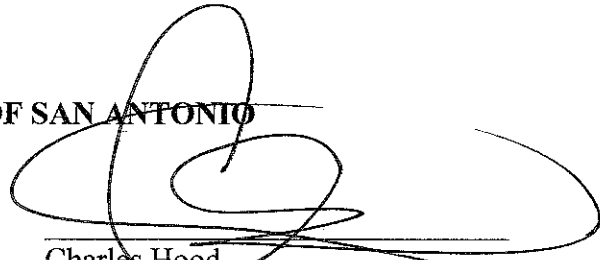
In witness whereof, the City, through its Chief Negotiator acting with full authority and in his representative capacity, and the Union's Chief Negotiator acting with full authority and in his representative capacity hereto execute this Agreement on the dates as indicated below:

Dated this 27th day of June, 2011

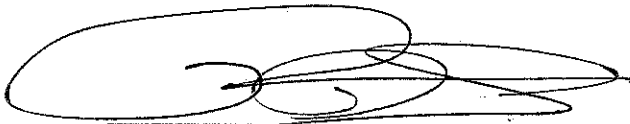
FOR THE CITY OF SAN ANTONIO




Lowell F. Denton
Attorney, City Chief Negotiator



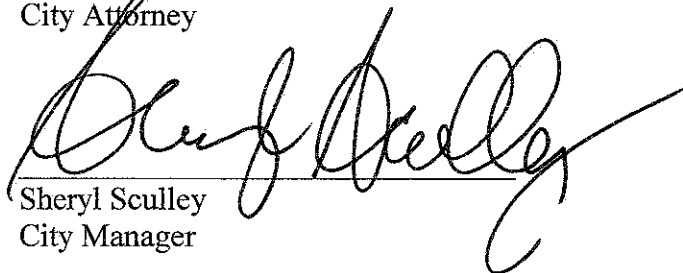
Charles Hood
Fire Chief



Michael Bernard
City Attorney




Erik J. Walsh
Assistant City Manager

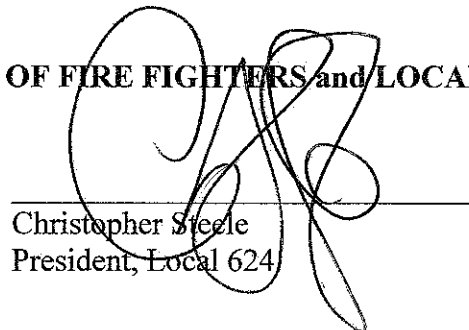


Sheryl Sculley
City Manager

FOR THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS and LOCAL 624:



Ricky J. Poole
Chief Negotiator, Local 624



Christopher Steele
President, Local 624

ATTACHMENT

ATTACHMENT I ORDINANCE 83927

JS
4/18/96
#33

AN ORDINANCE 83927

11

ADOPTING THE CITY'S OFFICER AND EMPLOYEE LIABILITY
PLAN POLICY AND REPLACING ORDINANCE NO. 62206,
ADOPTED IN JANUARY 1986.

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WHEREAS, the current Ordinance adopted as Ordinance No. 62206, in January 1986, lacks procedural detail and clarity, causing concerns as to "acts" covered and excluded under the Indemnification Policy; lacks detail in procedures that officers and employees need to follow in order to be entitled to indemnification; and causes confusion as to when the City will pay for employee's outside counsel, and

WHEREAS, a new Ordinance is needed to define "acts" and to formalize the procedural process; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. This Ordinance formally adopts the City of San Antonio Officer and Employee Liability Plan Policy ("the Plan"). It replace Ordinance No. 62206, adopted in January 1986. The Plan indemnifies City officers and employees in connection with legal proceedings arising from the performance of their duties.

SECTION 2. This Policy will clarify the rights and responsibilities of the City, and of the officer or employee, and will simplify the process of responding in a timely manner to the initiation of litigation. The Plan shall consist of the policies, rights, and duties embodied in this Ordinance, and shall be implemented and administered as provided by this Ordinance.

SECTION 3. The proposed Ordinance defines "acts" that are covered and excluded. If the City denies coverage, the Plan member may seek a determination from the court as to whether they are entitled to coverage; it will formalize the procedural process, in that officers and employees are given specific procedures in order to request indemnification.

SECTION 4. The City Attorney or his designee will represent the Plan member unless a conflict arises, then the Plan member must select an approved private attorney for representation. The City will not pay for any costs or legal fees incurred by the Plan member if they utilize an attorney not approved by the City Attorney and Risk Manager, unless required by law.

SECTION 5. The Plan does not affect police/fire personnel under their present labor contracts.

SECTION 6. Formal adoption of this Ordinance will not necessitate a current budget amendment, as expenditures will be approved on a case-by-case basis in connection with each individual lawsuit.


SECTION 7. This Ordinance shall be effective on April 25, 1996.

PASSED AND APPROVED this 11th day of April, 1996.


M A Y O R

ATTEST 
ASSISTANT City Clerk

APPROVED AS TO FORM:


City Attorney

96-15

The City of San Antonio Officer and Employee Liability Plan Policy

Section 1. Definitions.

The following terms, as used in this Ordinance, shall have the following meanings unless the context requires otherwise:

1. "Act" includes an omission or failure to Act.
2. "City" means the City of San Antonio, Texas.
3. "City Vehicle" means a vehicle or any mobile equipment leased to, or owned by CITY.
4. "Claim" means any claim made or suit brought against the City and/or a Plan Member for damage or injury alleged to be caused by a Covered Act.
5. "Claims Board" means the CITY's Self-Insurance Claims Board created by the Program Ordinance.
6. "Coverage Determination Action" means an action by a Plan Member to determine coverage under the Plan pursuant to Section 7 of this Ordinance.
7. "Covered Act" means any act or omission of a Plan Member while constituting no waiver of immunities, that:
 - (a) occurs during the discharge of the Plan Member's official duties,
 - (b) is within the course and scope of the Plan Member's office, employment, or assigned work with the CITY, as applicable, or
 - (c) constitutes, or is alleged or asserted to constitute, negligence on the part of the Plan Member.
 - (d) occurs during incidental medical services or first aid (including transportation) at the scene of an accident or injury by any Plan Member not regularly engaged in the medical profession.

- (e) occurs while rendering medical services (including transportation) by emergency medical technicians, paramedics, nurses and aides employed by the CITY while in the course of their employment as such;
- (f) occurs while a Plan Member is carrying out their authorized duties related to the CITY's public safety activities;
- (g) occurs while a Plan Member is using a CITY Vehicle, or one hired by or on behalf of the CITY, provided the use is with the permission of the CITY, or
- (h) arises from the use of a Non-Owned Automobile by a Plan Member while such automobile is being used in the business of the CITY;
- (i) arises from an act or omission of a Plan Member while they are acting the course of their duties as a member of the Claims Board.

8. "Excluded Action" means any Claim against a Plan Member:

- (a) by the CITY; or
- (b) that results from (i) an intentional or knowing violation of a penal law (including an administrative agency rule having the force and effect of law) committed by, or with the knowledge and consent of, the Plan Member; (ii) an act of fraud committed by, or at the direction of the Plan Member; (iii) official misconduct, a willful or wrongful act or omission, or an act or omission constituting gross negligence committed by, or at the direction of, the Plan Member; (iv) an act of conspiracy or collusion by the Plan Member against the CITY; or (v) knowing or intentional violation by the Plan Member of any ordinances, policies or procedures of the CITY, or of lawful orders, instructions or directives of CITY management; or (vi) an intentional or knowing violation of employment rules or policies; or
- (c) that arises while the Plan Member is using or operating a CITY vehicle or other CITY property or equipment with no authority to do so; or
- (d) that asserts or alleges liability assumed by the Plan Member under a contract, unless the Plan Member is authorized by the CITY to enter into the contract; or
- (e) that includes a joinder by the Plan Member of a claim or suit of the member against the CITY for benefits under the Plan; or

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- (f) for damages that are not recoverable against the CITY; or
 - (g) for damages the CITY is precluded from paying under Section 102.002, Texas Civil Practice and Remedies Code, Vernon's Texas Codes Annotated, or for payments in excess of the limitations on payments by the CITY prescribed by Section 102.003, Texas Civil Practice and Remedies Code, Vernon's Texas Codes Annotated; or
 - (h) that includes exemplary damages.
9. "Excluded Loss" means any of the following:
- (a) any Loss that arises out of an Excluded Action; or
 - (b) any Loss the CITY is precluded from paying by law; or
 - (c) any Loss arising out of a Claim resulting from a Covered Act that occurred before the Plan took effect, unless the Board at its discretion, extends coverage; or
 - (d) any Loss arising out of a claim resulting from a Covered Act that occurs while the Plan is in effect if (i) the Plan Member experiencing the Loss becomes legally obligated to pay the Loss after the Plan is terminated, and (ii) such Claim or Legal proceeding were barred by any statute of limitations when instituted; or
 - (e) any Loss arising out of a Claim resulting from a Covered Act that occurs after the Plan is terminated.
10. "Loss" means (i) the damages, excluding exemplary damages, that a Plan Member or former Plan Member is legally obligated to pay on account of a Claim; and (ii) amounts paid, or agreed to be paid, by the CITY pursuant to Section 3(b) and 4 of this Ordinance, to compromise or settle a Claim in order to avoid the risk expense and uncertainty of litigation.
11. "Loss Expenses" means any of the following:
- (a) the CITY's expense in investigating or defending a claim that may result in a Plan Claim; and
 - (b) the costs taxed against a Plan Member in a suit that results in a Plan Claim and any pre-judgment or post-judgment interest for which the Plan Member is liable; and

- (c) the reasonable expenses of a Plan Member incurred at the CITY's request in connection with a Claim that may result in a Plan Claim; and
 - (d) any attorneys' fees ordered by a court to be paid by a Plan Member in a suit arising out of a Claim that results in a Plan Claim.
12. "Non-Owned Automobile" means an automobile which is neither a CITY Vehicle nor one hired by the CITY.
 13. "Plan" means the City of San Antonio Officer and Employee Liability Plan, as established by this Ordinance.
 14. "Plan Claim" means any Plan Loss, together with the Plan Loss Expenses that result from the Claim giving rise to such Plan Loss.
 15. "Plan Loss" means any Loss that is not an Excluded Loss.
 16. "Plan Loss Expenses" means any Loss Expenses, except those incurred in connection with an Excluded Action.
 17. "Plan Member" means an individual who at the time of a covered Act is:
 - (a) an employee of the CITY;
 - (b) the Mayor, and any other member of the City Council;
 - (c) a member of (i) a CITY board, commission, or committee created by charter, ordinance, or resolution of the CITY, or (ii) the board of directors of any nonprofit corporation created under the authority of the City Council as an instrumentality of the CITY, unless by specific contract provision the CITY does not provide coverage.
 18. "Program Ordinance" means Ordinance No. 83926 (which establishes the CITY's Self-Insurance), as from time to time amended.

Section 2. Plan Established.

The CITY hereby establishes the "City of San Antonio Officer and Employee Liability Plan" which shall consist of the policies, rights, and duties embodied in this Ordinance. The Plan shall be implemented and administered as provided by this Ordinance.

Section 3. Defense and Settlement.

- (a) The CITY will defend any suit, except an Excluded Action, against a Plan Member or former Plan Member that results from a covered Act occurring prior to termination of the Plan, even if the suit is groundless or fraudulent.
- (b) The CITY may investigate, negotiate, or settle any Claim, as the CITY determines necessary or appropriate.

Section 4. Payment of Plan Claims.

- (a) The funds will pay each Plan Claim subject to any limitations contained in the Program Ordinance No. 85926, subject to the provisions of State law.
- (b) This Ordinance will in no way alter any CITY tort or contract liability existing the date of its' passage. More specifically, this Ordinance will not alter contractual obligations in either San Antonio Firefighters or San Antonio Police, labor contracts existing the date of this Ordinance's passage.
- (c) This Ordinance does not include payment, by the CITY, of exemplary damages on the behalf of a Plan Member.
- (d) **TO BE ENTITLED TO PAYMENT BY THE FUNDS FOR ANY PLAN CLAIM, A PLAN MEMBER MUST:**
 - (1) give notice of loss;
 - (2) notify the Claims Board in writing, within a reasonable time to be determined by the Board, after receipt of any written or oral notice of any Claim that may result in a Plan Claim but in any event not later than two (2) working days after receipt of such notice;
 - (3) cooperate fully with the Claims Board, City Attorney, Risk Management, the CITY and, upon the request of the Claims Board, assist in making settlement, in the conduct of any suit, and in enforcing any right of contribution or indemnity against an individual or organization who may be liable for the Act giving rise to a Claim, or to the CITY because of the payment by the CITY of a Plan Claim;
 - (4) cooperate fully in the investigation and defense of any Plan Claim made against the Plan Member including but not limited to, attendance at any hearing or trial held in connection with a Plan Claim and assisting in discovery, securing and giving evidence and obtaining the attendance of witnesses;

- (5) not give any oral or written statement or enter into any stipulation or agreement concerning a Claim resulting in a Plan Claim, except upon advice of the City Attorney or his designee or when questioned by a police officer at the scene of an accident;
- (6) not, except at the Plan Member's own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to any Claim resulting in a Plan Claim without the consent of the Claims Board;
- (7) deliver to the City Attorney or his designee, promptly upon receipt, but no later than two (2) working days, any demand, summons, notice, or other process received by the Plan Member in connection with any Claim that may result in a Plan Claim;
- (8) comply with the claims administrative procedure of the Claims Board; and
- (9) perform the duties and comply with the requirements imposed on the Plan member by this Ordinance or by the Program Ordinance.

Section 5. Legal Representation.

- (a) The CITY will provide legal representation for a Plan Member or former Plan Member in a Claim, except an Excluded Action, in which the asserted or alleged liability of the member results from a Covered Act occurring prior to termination of the Plan.
- (b) The City Attorney or his designee, and the Risk Manager, shall select, supervise and/or retain, if applicable, attorneys, experts, and investigators he deems necessary in connection with the defense of any Plan Claim.
- (c) The City Attorney or his designee shall be authorized to pursue all cross-claims, counter claims, and/or affirmative defenses on behalf of a Plan Member or former Plan Member.
- (d) If the City Attorney determines that there exists a potential conflict of interest for the City Attorney to represent a Plan Member (pursuant to Subsection (a) of this Section), the CITY will pay the reasonable fee of an a private attorney approved by the City Attorney and Risk Manager to represent the Plan Member.

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- (e) If the Plan Member utilizes an attorney not selected and approved by the City Attorney and Risk Manager, the Plan Member assumes all responsibility for all associated costs, fees, and expenses, except those required by law that the CITY pay.

Section 6. Assignment.

If payment of a Plan Claim or legal representation is provided to a Plan Member under the Plan, the CITY is assigned the Plan Member's rights of recovery against any individual or organization to the extent of the CITY's payment or liability for payment. A Plan Member shall execute and deliver to the Claims Board such documents as are necessary to secure this right of assignment in the sole opinion of the City Attorney or his designee. A Plan Member shall not do anything after a Plan Claim is incurred to prejudice this right.

The Plan Member shall:

- (a) cooperate fully with the Claims Board and, upon the request of the Claims Board, assist in making settlement, in the conduct of any suit, and in enforcing any right of contributions or indemnity against an individual or organization who may be liable to the CITY because of the payment by the CITY of a Plan Claim;
- (b) attend any hearing or trial held in connection with a Plan Claim and assist in discovery, securing and giving evidence, and obtaining the attendance of witnesses.

Section 7. Determination of Coverage.

If the CITY denies coverage under the Plan to a Plan Member, the Plan Member may seek a determination of whether the member is entitled to such coverage from a court of proper jurisdiction.

Section 8. No Creation of Cause of Action.

NOTHING CONTAINED IN THIS ORDINANCE SHALL BE CONSTRUED AS CREATING A RIGHT OR CAUSE OF ACTION AGAINST THE CITY OR A PLAN MEMBER OR AS GIVING A RIGHT TO A THIRD PARTY TO INSTITUTE OR MAINTAIN A SUIT THAT WOULD NOT OTHERWISE EXIST UNDER LAW AS A LEGAL CLAIM AGAINST THE CITY OR A PLAN MEMBER.

Section 9. Indemnification of Claims Board.

In the course of carrying out its responsibilities, the Claims Board and its members shall be indemnified and held harmless by the CITY for any act or omission and the Program shall pay all attorney fees necessary in its defense and fully recognize the members' official immunity.

Section 10. Administration of Plan.

The Claims Board is responsible for the administration of the Plan in accordance with its terms, subject to the superior authority of the City Manager and approval by the City Council. In the course of carrying out this responsibility, the Claims Board shall interpret and apply the provisions of this Ordinance.

Section 11. Other Insurance.

The Self-Insurance afforded by this Ordinance is primary self-insurance. When this self-insurance is primary and the Plan Member has other insurance which is stated to be applicable to the Plan Claim, the amount of the Fund's liability under this Ordinance shall not be reduced by the existence of such other insurance.

Section 12. Construction, Amendment, Repeal, and Termination.

The Rules of Construction, as found in the Code Interpretation Act, shall apply in interpreting this Ordinance. This Ordinance may be repealed or amended at any time, subject to existing rights of Plan Members under Section 4 of this Ordinance, in which case the provisions of this Ordinance shall govern, all save and except, continuing obligations under prior indemnity ordinances.

Section 13. Conflicts With Other Ordinances.

This Ordinance shall not operate to repeal or affect any other ordinance of the CITY except to the extent that the provisions thereof are inconsistent or in conflict with this Ordinance, in which case the provisions of this Ordinance shall govern.

Section 14. Severability.

That the terms and provisions of this Ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause or phrase of this Ordinance should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause or phrase of the Ordinance.

Section 15. Governmental Regulations.

The regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public.

Section 16. Payments Subject to Appropriation.

All amounts payable under this Ordinance are subject to available and appropriated funding, and applicable law.

Section 17. No Right to Fund by Plan Member.

This Ordinance does not grant or vest any right to any Plan Member in, or to, the Funds administered by the Program Ordinance or any other funds of the City of San Antonio.

Section 18. Effective Date of Plan.

The program shall become effective on April 25, 1996, 12:01 a.m. and shall continue in effect until terminated by the City Council.

Section 19. Effective Date of Ordinance.

This Ordinance shall become effective upon its final adoption by the City Council.